

*The Honorable Marsha J. Pechman*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

YOLANY PADILLA, on behalf of herself and her  
6-year-old son J.A.; IBIS GUZMAN, on behalf of herself  
and her 5-year-old son R.G.; BLANCA ORANTES, on  
behalf of herself and her 8-year-old son A.M.; BALTAZAR  
VASQUEZ, on behalf of himself;

Plaintiffs-Petitioners,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
("ICE"); U.S. DEPARTMENT OF HOMELAND  
SECURITY ("DHS"); U.S. CUSTOMS AND BORDER  
PROTECTION ("CBP"); U.S. CITIZENSHIP AND  
IMMIGRATION SERVICES ("USCIS"); EXECUTIVE  
OFFICE FOR IMMIGRATION REVIEW ("EOIR"); U.S.  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
("HHS"); OFFICE OF REFUGEE RESETTLEMENT  
("ORR"); THOMAS HOMAN, Acting Director of ICE;  
KIRSTJEN NIELSEN, Secretary of DHS; KEVIN K.  
McALEENAN, Acting Commissioner of CBP; L.  
FRANCIS CISSNA, Director of USCIS; ALEX M. AZAR  
II, Secretary of HHS; SCOTT LLOYD, Director of ORR;  
MARC J. MOORE, Seattle Field Office Director,, ICE,  
JEFFERSON BEAUREGARD SESSIONS III, United  
States Attorney General; LOWELL CLARK, warden of the  
Northwest Detention Center in Tacoma, Washington;  
CHARLES INGRAM, warden of the Federal Detention  
Center in SeaTac, Washington; DAVID SHINN, warden of  
the Federal Correctional Institute in Victorville, California;

Defendants-Respondents.

No. 2:18-cv-928 MJP

**STIPULATION AND  
NOTICE REGARDING  
SECOND AMENDED  
COMPLAINT**

NOTE ON MOTION  
CALENDAR:  
AUGUST 22, 2018.

**STIPULATION AND  
NOTICE REGARDING  
SECOND AMENDED  
COMPLAINT**

NORTHWEST IMMIGRANT RIGHTS PROJECT  
615 Second Avenue, Suite 400  
Seattle, WA 98104  
Telephone (206) 957-8611

1 Pursuant to Local Civil Rules 7(d)(1) and 10(g), Fed. R. Civ. P. 15(a)(2), and the prior  
2 stipulated schedule between the parties (Dkt. # 23) plaintiffs and defendants notify the Court that  
3 plaintiffs are filing their second amended complaint with defendants' written consent. For the  
4 Court's convenience, a copy of the second amended complaint is attached as Exhibit A and a  
5 redline of the second amended complaint showing changes from the first amended complaint is  
6 attached as Exhibit B.

7 Subsequent to this Notice, plaintiffs will file the second amended complaint with the  
8 Court's ecf system.

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**STIPULATION AND  
NOTICE REGARDING  
SECOND AMENDED  
COMPLAINT- 1**

CASE NO. 2:18-cv-928 MJP

**NORTHWEST IMMIGRANT RIGHTS PROJECT**  
615 Second Avenue, Suite 400  
Seattle, WA 98104  
Telephone (206) 957-8611

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of August, 2018.

s/ Matt Adams

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s/ Glenda M. Aldana Madrid

Glenda M. Aldana Madrid, WSBA No. 46987  
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s/ Leila Kang

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**STIPULATION AND  
NOTICE REGARDING  
SECOND AMENDED  
COMPLAINT- 2**

NORTHWEST IMMIGRANT RIGHTS PROJECT  
615 Second Avenue, Suite 400  
Seattle, WA 98104  
Telephone (206) 957-8611

I  
**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2018, I had the foregoing electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

s/ Benjamin J. Hodges

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**STIPULATION AND  
NOTICE REGARDING  
SECOND AMENDED  
COMPLAINT- 3**

CASE NO. 2:18-cv-928 MJP

**NORTHWEST IMMIGRANT RIGHTS PROJECT**  
615 Second Avenue, Suite 400  
Seattle, WA 98104  
Telephone (206) 957-8611

**EXHIBIT A**

*The Honorable Marsha J. Pechman*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

1 YOLANY PADILLA; IBIS GUZMAN; BLANCA  
2 ORANTES; BALTAZAR VASQUEZ;

Plaintiffs-Petitioners,

No. 2:18-cv-928 MJP

3 v.

4 U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
5 ("ICE"); U.S. DEPARTMENT OF HOMELAND  
6 SECURITY ("DHS"); U.S. CUSTOMS AND BORDER  
7 PROTECTION ("CBP"); U.S. CITIZENSHIP AND  
8 IMMIGRATION SERVICES ("USCIS"); EXECUTIVE  
9 OFFICE FOR IMMIGRATION REVIEW ("EOIR");  
10 THOMAS HOMAN, Acting Director of ICE; KIRSTJEN  
11 NIELSEN, Secretary of DHS; KEVIN K. McALEENAN,  
12 Acting Commissioner of CBP; L. FRANCIS CISSNA,  
13 Director of USCIS; MARC J. MOORE, Seattle Field Office  
14 Director, ICE; JEFFERSON BEAUREGARD  
SESSIONS III, United States Attorney General; LOWELL  
CLARK, warden of the Northwest Detention Center in  
Tacoma, Washington; CHARLES INGRAM, warden of the  
Federal Detention Center in SeaTac, Washington; DAVID  
SHINN, warden of the Federal Correctional Institute in  
Victorville, California; JAMES JANECKA, warden of the  
Adelanto Detention Facility;

15 Defendants-Respondents.

**SECOND AMENDED  
COMPLAINT:  
CLASS ACTION FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF**

**I. INTRODUCTION**

1. This lawsuit initially challenged the legality of the following three parts of the federal government's zero-tolerance policy with respect to persons fleeing for safety and asylum in the United States: (1) family separations, (2) credible fear interviews and determinations, and (3) the related bond hearings.

**A. Family Separations**

2. This lawsuit previously challenged the legality of the government's zero-tolerance practice of forcibly ripping children away from parents seeking asylum. The day after plaintiffs filed this suit in the Western District of Washington, however, a federal court in the Southern District of California issued a nationwide preliminary injunction Order against this forcible separation. (*Ms. L v. ICE*, S.D.Cal. case no. 18cv0428 DMS (MDD), docket no. 83).

3. With this Second Amended Complaint, plaintiffs confirm that they will not further pursue those claims in this case.

**B. Credible Fear Interviews & Determinations**

4. This lawsuit challenges the legality of the government's policy or practice of excessively prolonging the detention of asylum seekers placed in expedited removal proceedings by failing to promptly provide them their credible fear interview and determination. Federal law requires that persons who have asked for asylum or expressed a fear of persecution must be scheduled for a "credible fear interview" with a DHS official to determine whether that person should be allowed to proceed with applying for asylum because he or she has a credible fear of persecution. If the interviewer determines the asylum seeker does have a credible fear of persecution, the government assigns the case to the federal immigration court for hearings to adjudicate the merits of that person's asylum claim. If the interviewer determines the asylum seeker does not have a credible fear of persecution, the asylum seeker can appeal that determination to a federal immigration judge. But in either case, the federal government detains the asylum seeker until it determines that she or he has a credible fear of persecution. The *Ms. L*



1 v. *ICE* Order did not address the federal government's lengthy delays in conducting these  
2 statutorily required credible fear interviews and or determinations.

3 **C. Bond Hearings**

4 5. This lawsuit also challenges the legality of the government's related policy or  
5 practice of excessively prolonging the detention of asylum seekers by failing to promptly  
6 conduct the bond hearings required by federal law after an asylum seeker's positive completion  
7 of their credible fear interview. Federal law requires that if an asylum seeker enters the United  
8 States at a location other than a designated "Port Of Entry" and is determined to have a credible  
9 fear of persecution in his or her credible fear interview, that asylum seeker is entitled to an  
10 individualized bond hearing before an immigration judge to determine reasonable conditions for  
11 that person's release from federal detention while he or she awaits the many months it takes to  
12 adjudicate his or her asylum claim (e.g., a reasonable bond amount or parole without posting a  
13 monetary bond). This bond hearing must comport with constitutional requirements. Yet the  
14 government does not establish any timeline for setting this hearing, and as a matter of practice,  
15 does not even audio record or provide a transcript of this hearing for appeal or appellate review  
16 (unlike other hearings in removal proceedings before the immigration judge). The government  
17 also places the burden on asylum seekers to demonstrate in the bond hearing that they should not  
18 continue to be detained throughout the lengthy immigration proceedings. When an immigration  
19 judge denies bond, the immigration judge routinely fails to make specific findings but instead  
20 simply checks a box on a template order. The *Ms. L v. ICE* Order did not address the federal  
21 government's failure to conduct prompt bond hearings that comport with constitutional  
22 requirements.

23 **D. United States Constitution**

24 6. The Bill of Rights prohibits the federal government from depriving any person of  
25 their liberty without due process of law (U.S. Constitution, 5<sup>th</sup> Amendment).  
26

1           7. Asylum seekers who cross the United States border are persons. They  
2 accordingly have a constitutionally protected liberty interest in (1) not being imprisoned for an  
3 unreasonable time awaiting their credible fear interview and determination and (2) not being  
4 imprisoned without the opportunity for a prompt bond hearing that comports with constitutional  
5 requirements. And especially with respect to the federal government's avowed policy or practice  
6 to deter criminal violations of federal immigration laws, asylum seekers also have a  
7 constitutionally protected interest in (3) not being subjected to prolonged imprisonment for  
8 deterrence or penalty reasons unrelated to adjudicating the merits of their individual asylum  
9 claim.

10           8. With this Second Amended Complaint, plaintiffs specify with more particularity  
11 how defendants' implementation of the federal government's policies and practices with respect  
12 to persons fleeing for safety and seeking asylum in the United States violates the United States  
13 Constitution.

14 **E. Federal Law**

15           9. Federal law prohibits final agency action that is arbitrary, capricious, unlawfully  
16 withheld, or unreasonably delayed (e.g., Administrative Procedures Act, 5 U.S.C. §706). Federal  
17 law also grants persons fleeing persecution the right to apply for safety and asylum in the United  
18 States (e.g., 8 U.S.C. §§ 1225 & 1158; 8 C.F.R. §§ 235.3, 208.30, & 1003.42).

19           10. Federal law accordingly prohibits federal agencies from arbitrarily or capriciously  
20 depriving an asylum seeker of their child, their prompt credible fear interview and determination,  
21 or their prompt bond hearing. Federal law prohibits federal agencies from unlawfully  
22 withholding or unreasonably delaying an asylum seeker's reunification with their child, an  
23 asylum seeker's credible fear interview and determination, or an asylum seeker's bond hearing.  
24 And federal law prohibits federal agencies from impeding or seeking to deter an asylum seeker's  
25 legal right to apply for asylum.  
26

11. With this Second Amended Complaint, plaintiffs specify with more particularity how defendants' implementation of the federal government's policies and practices with respect to persons fleeing for safety and asylum in the United States violates federal law.

**F. Requested Relief**

12. With respect to (1) credible fear interviews and determinations and (2) the related bond hearings, plaintiffs request injunctive relief requiring defendants to cease their policies and practices implementing the federal government's policy or practice in violation of the United States Constitution and federal law. Plaintiffs request declaratory relief to terminate the parties' disagreement with respect to whether (and how) defendants' implementation of the federal government's policies or practices with respect to persons fleeing for safety and asylum in the United States violates the United States Constitution and federal law. Lastly, plaintiffs request whatever additional relief this Court finds warranted, just, or equitable.

**II. JURISDICTION**

13. This case arises under the Fifth Amendment of the United States Constitution, the Administrative Procedures Act ("APA"), and federal asylum statutes. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (habeas jurisdiction); and Article I, § 9, clause 2 of the United States Constitution ("Suspension Clause").

14. The original plaintiffs in this case were all in custody for purposes of habeas jurisdiction when this action was filed on June 25, 2018.

15. After this action was filed, plaintiffs Padilla, Orantes, and Guzman were eventually released from detention after they were eventually provided a credible fear interview and individualized bond hearings before an immigration judge. At the time this Second Amended Complaint is electronically filed on August 22, 2018, plaintiff Vasquez is still in custody for purposes of habeas jurisdiction.



1 will be released, and how soon their cases will be submitted for credible fear interview and  
2 subsequent proceedings before the immigration court.

3 23. Defendant U.S. Department of Homeland Security (“DHS”) is the federal  
4 government agency that enforces immigration laws of the United States. DHS’s responsibilities  
5 include determining whether an asylum seeker will be released and how soon his or her case will  
6 be submitted for a credible fear interview and subsequent proceedings before the immigration  
7 court. DHS’s local field office in Tukwila, Washington, is responsible for determining whether  
8 plaintiffs detained in Washington will be released, and how soon their cases will be submitted for  
9 credible fear interview and subsequent proceedings before the immigration court.

10 24. Defendant U.S. Customs and Border Protection (“CBP”) is the federal  
11 government agency that conducts the initial processing and detention of asylum seekers crossing  
12 the U.S. border. CBP is part of DHS. CBP’s responsibilities include determining whether an  
13 asylum seeker will be released and how soon his or her case will be submitted for a credible fear  
14 interview and determination.

15 25. Defendant U.S. Citizenship and Immigration Services (“USCIS”) is the federal  
16 government agency that, through its asylum officers, interviews asylum seekers to determine  
17 whether they should be assigned to the immigration court to be allowed to proceed with applying  
18 for asylum because they have a credible fear of persecution. USCIS is a part of DHS.

19 26. Defendant Executive Office for Immigration Review (“EOIR”) is the federal  
20 government agency that is responsible for conducting immigration court proceedings, including  
21 adjudicating plaintiffs’ asylum claims in removal proceedings and conducting individual bond  
22 hearings for persons in removal proceedings. EOIR is a part of the Department of Justice.

23 27. Defendant Thomas Homan is sued in his official capacity as the Director of ICE,  
24 and is a legal custodian of plaintiff Vasquez and putative class members.

25 28. Defendant Marc J. Moore is sued in his official capacity as the ICE Seattle Field  
26 Office Director, and is a legal custodian of detained plaintiffs.

29. Defendant Kirstjen Nielsen, is sued in her official capacity as the Secretary of DHS. In this capacity, she directs DHS, ICE, CBP, and USCIS. As a result, defendant Nielsen has responsibility for the administration of immigration laws pursuant to 8 U.S.C. §1103 and is a legal custodian of detained plaintiffs.

30. Defendant Kevin K. McAleenan is sued in his official capacity as the Commissioner of CBP.

31. Defendant L. Francis Cissna is sued in his official capacity as the Director of USCIS.

32. Defendant Jefferson Beauregard Sessions III is sued in his official capacity as the United States Attorney General. In this capacity, he directs agencies within the United States Department of Justice, including EOIR. Defendant Sessions has responsibility for the administration of immigration laws pursuant to 8 U.S.C. §1103, oversees defendant EOIR, and is empowered to grant asylum or other relief, including custody determinations made for persons in removal proceedings.

33. Defendant Lowell Clark is sued in his official capacity as the warden of the Northwest Detention Center in Tacoma, Washington.

34. Defendant Charles Ingram is sued in his official capacity as the warden of the Federal Detention Center in SeaTac, Washington.

35. Defendant David Shinn is sued in his official capacity as the warden of the Federal Correctional Institute in Victorville, California.

36. Defendant James Janecka is sued in his official capacity as the warden of the Adelanto Detention Facility in Adelanto, California.

## V. FACTS

### A. Seeking Asylum

37. Federal law allows a person to seek asylum in the United States.

38. Plaintiffs are persons seeking asylum in the United States.

1           39. Plaintiff **Yolany Padilla** and her 6-year-old son J.A. are asylum seekers who fled  
2 physical danger and persecution in Honduras.

3           40. On or about May 18, 2018, plaintiff Yolany Padilla and her 6-year-old son J.A.  
4 crossed the U.S.-Mexico border . They were arrested by a CBP agent as they were making their  
5 way to the closest Port Of Entry. She informed the CBP agent that they were seeking asylum.

6           41. Plaintiff **Ibis Guzman** and her 5-year-old son R.G. are asylum seekers who fled  
7 physical danger and persecution in Honduras.

8           42. On or about May 16, 2018, plaintiff Ibis Guzman and her 5-year-old son R.G.  
9 crossed the U.S.-Mexico border. They were arrested by a CBP agent. She informed the CBP  
10 agent that they were seeking asylum.

11           43. Plaintiff **Blanca Orantes** and her 8-year-old son A.M. are asylum seekers who  
12 fled physical danger and persecution in El Salvador.

13           44. On or about May 21, 2018, plaintiff Blanca Orantes and her 8-year-old son A.M.  
14 crossed the U.S.-Mexico border. They immediately walked to the CBP station to request  
15 asylum, and were arrested by a CBP agent. She informed the CBP agent that they were seeking  
16 asylum.

17           45. Plaintiff **Baltazar Vasquez** is an asylum seeker who fled physical danger and  
18 persecution in El Salvador.

19           46. On or about June 1, 2018, Baltazar Vasquez crossed the U.S.-Mexico border. He  
20 was arrested by a CBP agent, and informed the CBP agent that he was seeking asylum.

21 **B. Defendants' Zero-Tolerance Policy or Practice**

22           47. Defendant Sessions made an announcement about the federal government's  
23 "Zero-Tolerance Policy" on April 6, 2018, *See* [https://www.justice.gov/opa/pr/attorney-general-](https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry)  
24 [announces-zero-tolerance-policy-criminal-illegal-entry](https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry).

25           48. The federal government's zero-tolerance policy was designed to be a coordinated  
26 effort to deter asylum seekers entering the country and exercising their right to apply for asylum

1 by criminally prosecuting them, forcibly separating them from their children, and imposing  
2 prolonged, uncertain imprisonment (euphemistically called “detention”) on them.

3 49. The federal government’s zero-tolerance policy has been implemented against  
4 asylum seekers who enter the country without inspection requesting asylum.

5 50. The federal government’s zero-tolerance policy has also been implemented  
6 against asylum seekers who appear at a Port Of Entry to request asylum.

7 **C. Promptly Taking Children Away From Parents Seeking Asylum**

8 51. One part of the federal government’s zero-tolerance policy or practice was to  
9 promptly take children away from parents seeking asylum in the United States.

10 52. The federal government would send the parent and child to separate federal  
11 detention facilities – often in different states thousands of miles away from each other.

12 53. A child’s forced separation from a parent causes the child severe trauma. This  
13 damage is even worse for children who are already traumatized from fleeing danger and  
14 persecution in their home country. The cognitive and emotional damage caused by a child’s  
15 forced separation from a parent can be permanent.

16 54. A parent’s forced separation from their child is also deeply damaging to the  
17 parent. This damage is even worse for parents who are already traumatized from fleeing danger  
18 and persecution in their home country, are given little to no information regarding the well-being  
19 or whereabouts of their child, and fear they may never see their child again.

20 55. The federal government promptly took children away from parents seeking asylum  
21 in the United States without any demonstration in a hearing that that parent is unfit or presents  
22 any danger to the child.

23 56. The federal government promptly took children away from parents seeking  
24 asylum in the United States without any evidence or accusation that the parent seeking asylum is  
25 an unfit parent, or presents a danger to the child, or is not acting in the child’s best interest, or is  
26 a threat to the child’s safety, or abused the child, or neglected the child.



1           57.     The federal government promptly took children away from parents seeking  
2     asylum in the United States to penalize and deter persons from seeking asylum.

3           58.     The federal government promptly took children away from parents seeking  
4     asylum in the United States as part of its zero-tolerance policy against criminal violations of  
5     federal immigration laws.

6           59.     Plaintiffs Yolany Padilla, Ibis Guzman, and Blanca Orantes are parents who  
7     sought asylum and were (1) detained in immigration custody by defendants in Washington State  
8     and (2) separated from a minor child by defendants without any demonstration in a hearing that  
9     that parent is unfit or presents a danger to the child.

10          60.     When plaintiff **Yolany Padilla** and her 6-year-old son J.A were taken into  
11     custody, a federal agent promptly announced that Yolany Padilla's son would be taken away  
12     from her. Her 6-year-old son clutched his mother's shirt and said, "no, mommy, I don't want to  
13     go." She reassured her son that any separation would be short, and that everything would be  
14     okay. She was able to stay with her son as they were transferred to one of the federal detention  
15     buildings that detainees commonly refer to as "the hielera" ("the freezer") because of its cold  
16     temperatures. Once they arrived, Yolany Padilla's 6-year-old son was forcibly taken away from  
17     her without explanation.

18          61.     Yolany Padilla's 6-year-old son was taken away from her without any hearing,  
19     and without any accusation or evidence that she is in any way an unfit parent, or that she is in  
20     any way not acting in his best interest fleeing for safety in the United States, or that she is in any  
21     way a threat to his safety, or that she in any way abused him, or that she in any way neglected  
22     him.

23          62.     Yolany Padilla was then transferred to another federal facility in Laredo, Texas  
24     about three days later. The federal officers in that facility took her son's birth certificate from  
25     her. When she asked for it back, she was told the immigration authorities had it. No one has  
26     returned her son's birth certificate to her.

1           63.     About twelve days later, Yolany Padilla was transferred to the Federal Detention  
2 Center in SeaTac, Washington.

3           64.     Despite repeated inquiries into her son's whereabouts, Yolany Padilla was not  
4 provided any information about her son until about a month into her detention, when the  
5 Honduran consul visited the detention center and she explained she had no news of her son.  
6 Soon thereafter she was given a piece of paper saying her son had been put in a place called  
7 "Cayuga Center" in New York. That piece of paper also had a phone number, but she was not  
8 able to call her son that day because she did not have money to make a long distance phone call.

9           65.     The next day, someone gave Yolany Padilla the opportunity to call her son for  
10 about ten minutes. Her 6-year-old son mostly cried quietly.

11           66.     Yolany Padilla was not released from federal imprisonment until July 6, 2018,  
12 after an immigration judge finally granted her a bond.

13           67.     Yolany Padilla's 6-year-old son was not released from federal imprisonment until  
14 July 14, 2018. That was almost two months after the federal government forcibly took him away  
15 from his mom.

16           68.     CBP transported plaintiff **Ibis Guzman** and her 5-year-old son R.G. to one of the  
17 federal detention buildings in Texas that detainees commonly refer to as "the hielera" ("the  
18 freezer") because of its cold temperatures. One CBP agent questioned Ibis Guzman, and  
19 another CBP agent forcibly took her son away stating she would see her son again in three days.

20           69.     Ibis Guzman's 5-year-old son was taken away from her without any hearing, and  
21 without any accusation or evidence that she is in any way an unfit parent, or that she is in any  
22 way not acting in his best interest fleeing for safety in the United States, or that she is in any way  
23 a threat to his safety, or that she in any way abused him, or that she in any way neglected him.

24           70.     After three days, Ibis Guzman was transferred to a different CBP facility in  
25 Texas. When she asked the federal agents there about the reunification with her son that the  
26 CBP agent had promised, they told her they did not know anything about her son's whereabouts.

1           71. Ibis Guzman was then transferred to another federal facility in Laredo, Texas,  
2 where she was detained without any knowledge of the whereabouts of her 5-year-old son and  
3 without any means to contact him. She did not receive any information about him during this  
4 time, despite her repeated attempts to obtain such information.

5           72. About two weeks later, Ibis Guzman was transferred to the Federal Detention  
6 Center in SeaTac, Washington.

7           73. Ibis Guzman was not provided any information about her 5-year-old son until  
8 about a week later, when she was told that her son had been given to a place called “Baptist  
9 Child and Family Services” in San Antonio, Texas. But she was still not able to contact him.

10          74. On June 20, 2018, Ibis Guzman was transferred to the Northwest Detention  
11 Center in Tacoma, Washington.

12          75. Ibis Guzman was denied bond by the immigration judge at her bond hearing on  
13 July 3, 2018.

14          76. She was not released until on or about July 31, 2018, after the federal government  
15 was forced to comply with the preliminary injunction in *Ms. L.*, and thereafter reunited with her  
16 child.

17          77. CBP transported plaintiff **Blanca Orantes** and her 8-year-old son A.M. to a  
18 federal detention facility in Texas. CBP agents led Blanca Orantes into one of the federal  
19 detention buildings that detainees commonly refer to as “the hielera” (“the freezer”) because of  
20 its cold temperatures, and took her 8-year-old son to another part of that detention facility.

21          78. While a CBP agent was later interviewing Blanca Orantes, another agent brought  
22 her 8-year-old son to her and told her to “say goodbye” to him because they were being  
23 separated. Her 8-year-old son began crying and pleading for his mom not to leave him.

24          79. Blanca Orantes’ 8-year-old son was taken away from her without any hearing,  
25 and without any accusation or evidence that she is in any way an unfit parent, or that she is in  
26 any way not acting in his best interest fleeing for safety in the United States, or that she is in any

1 way a threat to his safety, or that she in any way abused him, or that she in any way neglected  
2 him.

3 80. On or around May 24, 2018, Blanca Orantes was handcuffed and taken to court.  
4 She pled guilty to improper entry under 8 U.S.C. §1325 and was sentenced to time served. She  
5 was then returned to her cell.

6 81. About nine days later, Blanca Orantes was transported to the Federal Detention  
7 Center in SeaTac, Washington.

8 82. The federal government did not provide Blanca Orantes any information about  
9 her 8-year-old son until June 9, 2018, when an ICE officer handed her a slip of paper saying her  
10 son was being held at place called “Children’s Home of Kingston” in Kingston, New York.

11 83. On June 20, 2018, Blanca Orantes was transferred to the Northwest Detention  
12 Center in Tacoma, Washington, where she was finally allowed to speak to her 8-year-old son by  
13 telephone.

14 84. Blanca Orantes was denied bond by the immigration judge at her bond hearing on  
15 July 16, 2018.

16 85. She was not released until on or about July 24, 2018, in order to comply with the  
17 preliminary injunction in *Ms. L.*, and thereafter reunited with her child.

18 **D. Failing To Promptly Provide The Credible Fear Interview & Determination**  
19 **Required By Federal Law**

20 86. One part of the federal government’s policy or practice is to keep asylum seekers  
21 in limbo in federal detention by delaying the threshold credible fear interview to which asylum  
22 seekers are entitled under federal law.

23 87. Detained asylum seekers who are subject to expedited removal are not permitted  
24 to move forward with their asylum claims until a credible fear determination has been made by a  
25 DHS official.  
26

1           88.     The federal government keeps asylum seekers in limbo in federal detention by  
2     delaying their credible fear interview in part to penalize and deter persons from seeking asylum.

3           89.     The federal government keeps asylum seekers in limbo in federal detention by  
4     delaying their credible fear interview.

5           90.     The federal government has not established any procedural timeframes for  
6     providing asylum seekers the credible fear interview and determinations required by federal law.

7           91.     Plaintiffs Yolany Padilla, Ibis Guzman, Blanca Orantes, and Baltazar Vasquez are  
8     detained asylum seekers subject to expedited removal proceedings under 8 U.S.C. § 1225(b) who  
9     were not provided a credible fear interview and determination within 10 days of requesting  
10    asylum or expressing a fear of persecution to a DHS official.

11          92.     When plaintiff **Yolany Padilla** first spoke with the CBP agent on or about  
12    May 18, 2018, she told the CBP agent that she and her son were requesting asylum.

13          93.     Neither Yolany Padilla nor her son were provided a credible fear interview within  
14    10 days of requesting asylum or expressing a fear of persecution to a DHS official.

15          94.     Neither Yolany Padilla nor her son were provided a credible fear interview as of  
16    the date this lawsuit was originally filed on June 25, 2018.

17          95.     Instead, Yolany Padilla was not provided her credible fear interview until July 2,  
18    2018. That was more than a month after federal officials imprisoned her. The DHS official  
19    conducting her credible fear interview determined that Yolany Padilla does have a credible fear  
20    of persecution, and therefore assigned her asylum claim to immigration court for adjudication on  
21    the merits

22          96.     When plaintiff **Ibis Guzman** first spoke with the CBP agent on or about May 16,  
23    2018, she told the CBP agent that she and her son were requesting asylum.

24          97.     Neither Ibis Guzman nor her son were provided a credible fear interview within  
25    10 days of requesting asylum or expressing a fear of persecution to a DHS official.

1           98.     Neither Ibis Guzman nor her son were provided a credible fear interview as of the  
2 date this lawsuit was originally filed on June 25, 2018.

3           99.     Instead, Ibis Guzman was not provided her credible fear interview until June 27,  
4 2018. That was more than a month after federal officials imprisoned her. The DHS official  
5 conducting her credible fear interview determined that Ibis Guzman does have a credible fear of  
6 persecution, and therefore assigned her asylum claim to immigration court for adjudication on  
7 the merits.

8           100.    When plaintiff **Blanca Orantes** first spoke with the CBP agent on or about  
9 May 21, 2018, she told the CBP agent that she and her son were requesting asylum.

10          101.    Neither Blanca Orantes nor her son were provided a credible fear interview within  
11 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

12          102.    Neither Blanca Orantes nor her son were provided a credible fear interview as of  
13 the date this lawsuit was originally filed on June 25, 2018.

14          103.    Instead, Blanca Orantes was not provided her credible fear interview until  
15 June 27, 2018. That was more than a month after federal officials imprisoned her. The DHS  
16 official conducting her credible fear interview determined that Blanca Orantes does have a  
17 credible fear of persecution, and therefore assigned her asylum claim to immigration court for  
18 adjudication on the merits.

19          104.    When plaintiff **Baltazar Vasquez** first spoke with the CBP agent on or about  
20 June 1, 2018, he told the CBP agent that he was requesting asylum.

21          105.    Baltazar Vasquez was not provided a credible fear interview within 10 days of  
22 requesting asylum or expressing a fear of persecution to a DHS official.

23          106.    Baltazar Vasquez was not provided a credible fear interview as of the date this  
24 lawsuit was originally filed on June 25, 2018.

25          107.    Baltazar Vasquez was not scheduled for a credible fear interview until after the  
26 First Amended Complaint was electronically filed on July 15, 2018.

1           108. Baltazar Vasquez was not provided his credible fear interview until July 31, 2018.  
2 That was almost two months after federal officials imprisoned him. The DHS official conducting  
3 his credible fear interview determined that Baltazar Vasquez does have a credible fear of  
4 persecution, and therefore referred his case to an immigration court for adjudication of the merits  
5 of his asylum claim.

6           109. Baltazar Vasquez is currently imprisoned at the Adelanto Detention facility in  
7 Adelanto, California.

8 **E. Failing To Promptly Provide The Bond Hearing Required By Federal Law**

9           110. One part of the federal government's policy or practice is to prolong  
10 imprisonment without a proper bond hearing for asylum seekers who entered the United States  
11 without inspection.

12           111. The federal government keeps asylum seekers in limbo in federal detention by  
13 delaying their bond hearing in part to penalize and deter persons from seeking asylum.

14           112. The federal government keeps asylum seekers in limbo in federal detention by  
15 delaying their bond hearing.

16           113. The federal government has not established any procedural timeframes for timely  
17 providing the bond hearings required by federal law. The federal government has not established  
18 basic procedural safeguards for bond hearings such as verbatim transcripts or audio recordings of  
19 bond hearings. The absence of such basic safeguards impedes an imprisoned asylum seeker's  
20 ability to meaningful appeal the denial of bond in their individual case as not being based on  
21 evidence of legally relevant factors (i.e., being a flight risk or danger to the community) instead  
22 of legally irrelevant factors (e.g., the zero-tolerance policy's general goal of punishing and  
23 deterring asylum seekers). Defendant EOIR maintains audio recordings of proceedings before  
24 an Immigration Judge other than bond hearings, and provides verbatim transcripts on appeals to  
25 the Board of Immigration Appeals. But Defendant EOIR does not maintain audio recordings of  
26 an asylum seeker's bond hearing or provide verbatim transcripts for appeal of bond hearing



1 determinations. Indeed, when an immigration judge denies bond, they routinely do not make  
2 specific, particularized findings, and instead simply check a box on a template order. Moreover,  
3 Defendants place the burden of proof on the noncitizen to demonstrate that they should not  
4 continue to be detained throughout their lengthy immigration proceedings.

5 114. Plaintiff **Yolany Padilla** is an asylum seeker who originally entered the United  
6 States without inspection, was initially subject to expedited removal proceedings under  
7 8 U.S.C. §1225(b) and detained, was determined to have a credible fear of persecution, but was  
8 not provided a timely bond hearing with a verbatim transcript or audio recording.

9 115. The federal government did not provide Yolany Padilla a bond hearing until after  
10 she filed this lawsuit. At the conclusion of that bond hearing, an order was issued allowing her  
11 to be released from federal detention upon posting an \$8,000 bond pending the adjudication of  
12 her asylum claim on the merits. To her knowledge, there is no verbatim transcript or recording  
13 of her bond hearing. At the bond hearing, the immigration judge placed the burden of proof on  
14 Yolany Padilla to demonstrate that she qualified for a bond.

15 116. Plaintiffs **Ibis Guzman** is a detained asylum seeker who originally entered the  
16 United States without inspection, was initially subject to expedited removal proceedings under  
17 8 U.S.C. §1225(b), was determined to have a credible fear of persecution, but was not provided a  
18 timely bond hearing with a verbatim transcript or audio recording.

19 117. The federal government did not provide Ibis Guzman a bond hearing until after  
20 she filed this lawsuit. At the bond hearing, the immigration judge placed the burden of proof on  
21 Ibis Guzman to demonstrate that she qualified for a bond. At the conclusion of that bond  
22 hearing, an immigration judge issued an order denying her release on *any* bond amount pending  
23 the adjudication of her asylum claim on the merits.

24 118. The immigration judge did not make specific, particularized findings for the basis  
25 of the denial. The immigration judge circled the preprinted words “Flight Risk” on a form order,  
26 rendering her ineligible for bond even though a DHS official had already determined she has a



1 credible fear of persecution and even though the federal government has taken away her  
2 6-year-old son.

3 119. The immigration judge provided no written explanation for circling “Flight Risk”  
4 or the factors and evidence considered in making that conclusion to deny bond. Per defendant  
5 EOIR’s practice, there is no verbatim transcript or recording of her bond hearing. She was not  
6 released until on or about July 31, 2018, in order to comply with the preliminary injunction in  
7 *Ms. L.*

8 120. Plaintiff **Blanca Orantes** is a detained asylum seeker who originally entered the  
9 United States without inspection, was initially subject to expedited removal proceedings under  
10 8 U.S.C. §1225(b), was determined to have a credible fear of persecution once she was  
11 eventually provided her credible fear interview and determination, but was not provided a bond  
12 hearing with a verbatim transcript or recording of the hearing within 7 days of requesting a bond  
13 hearing.

14 121. Blanca Orantes was not provided a bond hearing until July 16, 2018. At the bond  
15 hearing, the immigration judge placed the burden of proof on Blanca Orantes to demonstrate that  
16 she qualified for a bond. At the conclusion of that bond hearing, an immigration judge issued an  
17 order denying her release on *any* bond amount pending the adjudication of her asylum claim on  
18 the merits.

19 122. The immigration judge did not make specific, particularized findings for the basis  
20 of the denial, and even failed to check the box indicating why she was denied bond on the  
21 template order. Per defendant EOIR’s practice, there is no verbatim transcript or recording of her  
22 bond hearing. At the bond hearing the immigration judge placed the burden on Blanca Orantes  
23 to demonstrate that she was qualified for a bond.

24 123. She was not released until on or about July 23, 2018, after the federal government  
25 was forced to comply with the preliminary injunction in *Ms. L.*, and thereafter reunited her with  
26 her child.



1           129. Plaintiffs allege the following on information and belief: At least several hundred  
2 asylum seekers currently fit within the **credible fear interview class**. Defendants should know  
3 the precise number since the members of this class should be readily ascertainable through  
4 defendants' records.

5           130. The **credible fear interview class** satisfies Rule 23(a)(1). This class is so  
6 numerous that joinder of all class members is impracticable.

7           131. The **credible fear interview class** satisfies Rule 23(a)(2). There are questions of  
8 law or fact common to this class. Given the definition of this class, its members all share the  
9 same common factual situation of being a detained asylum seeker subject to defendants' practice  
10 of failing to provide a credible fear interview and determination within 10 days of their  
11 expressing a fear of persecution or a request for asylum to a DHS official, despite the fact they  
12 have been placed in expedited removal proceedings under 8 USC § 1225(b), which requires  
13 immediate action. The members of this class share common questions of law governing whether  
14 defendants' practice of failing to provide class members a credible fear interview and  
15 determination within 10 days of their expressing a fear of persecution or a request for asylum to  
16 a DHS official is legal under the Fifth Amendment, APA, or federal asylum statutes.

17           132. The **credible fear interview class** satisfies Rule 23(a)(3). Plaintiffs' claims  
18 concerning the legality of defendants' practice of failing to provide a credible fear interview and  
19 determination within 10 days of their expressing a fear of persecution or a request for asylum to  
20 a DHS official are typical of the claims of class members. As noted in the prior paragraph, the  
21 definition of this class dictates that plaintiffs share with the other class members the same  
22 common factual situation and the same common questions of law under the Fifth Amendment,  
23 APA, and federal asylum statutes.

24           133. The **credible fear interview class** satisfies Rule 23(a)(4). Plaintiffs will fairly  
25 and adequately protect the interests of that class. They are represented by counsel from the  
26 Northwest Immigrant Rights Project and the American Immigration Council, who have extensive

1 experience litigating class action lawsuits and other complex cases in federal court, including  
2 civil rights lawsuits on behalf of noncitizens.

3 134. The **credible fear interview class** satisfies Rule 23(b)(1). Requiring separate  
4 actions by the members of this class would create the risk of inconsistent or varying  
5 adjudications with respect to individual class members that would establish incompatible  
6 standards of conduct for defendants. Requiring separate actions by the members of this class  
7 would create the risk of adjudications with respect to individual class members that, as a  
8 practical matter, would be dispositive of the interests of the other class members not parties to  
9 the individual adjudications, or would at least substantially impair or impede their ability to  
10 protect their interests.

11 135. The **credible fear interview class** satisfies Rule 23(b)(2). Defendants have acted  
12 or refused to act on grounds that apply generally to this class. Final injunctive relief or  
13 corresponding declaratory relief is appropriate with respect to the class as a whole, especially as  
14 it involves uniform, federal immigration law and plaintiffs are transferred across the country by  
15 defendants. Moreover, requiring separate actions by the members of this class would create the  
16 risk of inconsistent or varying adjudications with respect to individual class members that would  
17 establish incompatible standards of conduct for defendants.

18 136. The **credible fear interview class** satisfies Rule 23(b)(3). Questions of law or  
19 fact common to members of this class predominate over questions affecting only individual  
20 members. A class action is superior to other available methods for fairly and efficiently  
21 adjudicating the legality of defendants' practice of failing to provide a credible fear interview  
22 and determination within 10 days of a person's expressing a fear of persecution or requesting  
23 asylum.

24 **B. "Bond Hearing Class"**

25 137. With respect to plaintiffs' claims concerning defendants' failure to promptly  
26 conduct a bond hearing to set reasonable conditions for the asylum seeker's release pending the

lengthy proceedings to adjudicate his or her asylum claim, and to provide a bond hearing that comports with the requirements of due process, plaintiffs seek to represent the following class (the “**bond hearing class**”):

All detained asylum seekers who entered the United States without inspection, who were initially subject to expedited removal proceedings under 8 U.S.C. §1225(b), who were determined to have a credible fear of persecution, but who are not provided a bond hearing with a verbatim transcript or recording of the hearing within 7 days of requesting a bond hearing.

138. Plaintiffs allege the following on information and belief: At least several hundred asylum seekers currently fit within the **bond hearing class**. Defendants should know the precise number since the members of this class should be readily ascertainable through defendants’ records.

139. The **bond hearing class** satisfies Rule 23(a)(1). This class is so numerous that joinder of all class members is impracticable.

140. The **bond hearing class** satisfies Rule 23(a)(2). There are questions of law or fact common to this class. Given the definition of this class, its members all share the same common factual situation of being asylum seekers who entered the United States without inspection, were initially subject to expedited removal proceedings, were found to have a credible fear of persecution, but were then subject to defendants’ practice of failing to provide a bond hearing with a transcript or recording of the hearing within 7 days of their requesting a bond hearing. Moreover, defendant EOIR placed the burden on class members to demonstrate in bond hearings that plaintiffs are eligible for release, and defendants EOIR failed to make any specific, particularized findings of fact when denying release. The members of this class share common questions of law governing whether defendants’ practice of failing to provide a bond hearing with a transcript or recording of the proceeding within 7 days of their requesting a bond hearing, Defendant EOIR’s practice of placing the burden of proof on the detained asylum seeker to demonstrate their eligibility for release, and Defendant EOIR’s failure to make specific,

1 particularized findings when denying release, is legal under the Fifth Amendment, APA, or  
2 federal asylum statutes.

3 141. The **bond hearing class** satisfies Rule 23(a)(3). Plaintiffs' claims concerning the  
4 legality of defendants' practice of failing to provide a bond hearing with a transcript or recording  
5 of the proceeding within 7 days of an asylum seeker's requesting a bond hearing, Defendant  
6 EOIR's practice of placing the burden of proof on the detained asylum seeker to demonstrate  
7 they are eligible for release, and Defendant EOIR's failure to make specific findings when  
8 denying release, are typical of the claims of class members. As noted in the prior paragraph, the  
9 definition of this class dictates that plaintiffs share with the other class members the same  
10 common factual situation and the same common questions of law under the Fifth Amendment,  
11 APA, and federal asylum statutes.

12 142. The **bond hearing class** satisfies Rule 23(a)(4). Plaintiffs will fairly and  
13 adequately protect the interests of that class. They are represented by counsel from the  
14 Northwest Immigrant Rights Project and the American Immigration Council, who have extensive  
15 experience litigating class action lawsuits and other complex cases in federal court, including  
16 civil rights lawsuits on behalf of noncitizens.

17 143. The **bond hearing class** satisfies Rule 23(b)(1). Requiring separate actions by  
18 the members of this class would create the risk of inconsistent or varying adjudications with  
19 respect to individual class members that would establish incompatible standards of conduct for  
20 defendants. Requiring separate actions by the members of this class would create the risk of  
21 adjudications with respect to individual class members that, as a practical matter, would be  
22 dispositive of the interests of the other class members not parties to the individual adjudications,  
23 or would at least substantially impair or impede their ability to protect their interests.

24 144. The **bond hearing class** satisfies Rule 23(b)(2). Defendants have acted or  
25 refused to act on grounds that apply generally to this class. Final injunctive relief or  
26 corresponding declaratory relief is appropriate with respect to the class as a whole especially as it

1 involves uniform, federal immigration law and plaintiffs are transferred across the country by  
 2 defendants. Moreover, requiring separate actions by the members of this class would create the  
 3 risk of inconsistent or varying adjudications with respect to individual class members that would  
 4 establish incompatible standards of conduct for defendants.

5 145. The **bond hearing class** satisfies Rule 23(b)(3). Questions of law or fact  
 6 common to members of this class predominate over questions affecting only individual  
 7 members. A class action is superior to other available methods for fairly and efficiently  
 8 adjudicating the legality of defendants' practice of failing to provide a bond hearing with a  
 9 transcript or recording of the proceeding within 7 days of an asylum seeker's requesting a bond  
 10 hearing, defendant EOIR's practice of placing the burden of proof on the detained asylum seeker  
 11 to demonstrate they are eligible for release, and Defendant EOIR's failure to make specific,  
 12 particularized findings when denying release.

## 13 **VII. CAUSES OF ACTION**

### 14 **COUNT I**

#### 15 **(Violation of Due Process)**

16 146. All of the foregoing allegations are repeated and re-alleged as though fully set  
 17 forth herein.

18 147. The Due Process Clause of the Fifth Amendment applies to all "persons" on  
 19 United States soil and thus applies to Mss. Guzman, Orantes, Mr. Vasquez and all proposed class  
 20 members.

21 148. The named plaintiffs and proposed class members have a constitutionally  
 22 protected liberty interest in (1) not being imprisoned in federal detention for an unreasonable  
 23 time awaiting their credible fear interview and determination, (2) not being imprisoned in federal  
 24 detention for an unreasonable time awaiting their bond hearing, and (3) having a bond hearing  
 25 that is fair and comports with due process.  
 26



1           149. The federal government's imprisoning plaintiffs and members of the Credible  
2 Fear Interview Class in federal detention for an unreasonable time awaiting their credible fear  
3 interview and determination violates their substantive due process rights. The government's  
4 prolonging these asylum seekers' federal detention by delaying their credible fear interview and  
5 determination more than 10 days does not further a legitimate purpose. The government's  
6 prolonging these asylum seekers' federal detention by delaying their credible fear interview and  
7 determination more than 10 days does not further a compelling governmental interest.  
8 Defendants' prolonging their federal detention by delaying their credible fear interview and  
9 determination more than 10 days is a violation of the constitutional substantive due process  
10 rights of plaintiffs and their children as well as of members of the Credible Fear Interview Class.

11           150. The federal government's imprisoning plaintiffs and members of the Credible  
12 Fear Class in federal detention for an unreasonable time awaiting their credible fear interview  
13 and determination violates their procedural due process rights. That ongoing imprisonment  
14 awaiting a credible fear interview and determination is contrary to the law governing expedited  
15 removal proceedings and is imposed without any hearing. Defendants' imprisoning plaintiffs  
16 and members of the Credible Fear Interview Class in federal detention for an unreasonable time  
17 awaiting their credible fear interview and determination is a violation of the constitutional due  
18 process rights of plaintiffs and their children as well as of members of the Credible Fear  
19 Interview Class.

20           151. The federal government's imprisoning plaintiffs and members of the Bond  
21 Hearing Class in federal detention for an unreasonable time awaiting a bond hearing to assess  
22 their eligibility for release pending the lengthy proceedings to adjudicate their asylum claim  
23 violates substantive due process. The government's prolonging these asylum seekers' federal  
24 detention by delaying their bond hearing more than 7 days does not further a legitimate purpose.  
25 The government's prolonging these asylum seekers' federal detention by delaying their bond  
26 hearing more than 7 days does not further a compelling governmental interest. Moreover,



1 denying release for general deterrence or punishment goals unrelated to the specific factors of  
2 whether the individual presents a flight risk or danger to the community unlawfully deprives  
3 these asylum seekers of their constitutional right to liberty. Defendants' prolonging plaintiffs'  
4 and members of the Bond Hearing Class's federal detention by delaying their bond hearing more  
5 than 7 days is a violation of the constitutional substantive process rights of plaintiffs and  
6 members of the Bond Hearing Class.

7 152. The federal government's imprisoning plaintiffs and members of the Bond  
8 Hearing Class in federal detention for an unreasonable time awaiting a bond hearing to assess  
9 their eligibility for release pending the lengthy proceedings to adjudicate their asylum claim  
10 violates procedural due process. That ongoing detention is imposed without providing a bond  
11 hearing with a transcript or recording of the hearing and specific, particularized findings with  
12 respect to any denial of release, denies plaintiffs and members of the Bond Hearing Class an  
13 adequate record to file an administrative appeal or habeas petition. Moreover, denying release  
14 for general deterrence goals unrelated to the specific factors of whether the individual presents a  
15 flight risk or danger to the community strips detained asylum seekers of a fair hearing. What is  
16 more, placing the burden on the noncitizen to demonstrate their eligibility for release also  
17 constitutes a violation of their due process rights. Defendants' prolonging plaintiffs' and  
18 members of the Bond Hearing Class's federal detention by failing to provide a bond hearing  
19 where the burden of proof is on the government and with a verbatim transcript or recording of  
20 the hearing within 7 days of requesting a bond is a is a violation of the constitutional substantive  
21 due process rights of plaintiffs and their children as well as of members of the Bond Hearing  
22 Class.

23 **COUNT II**  
24 **(Administrative Procedure Act)**

25 153. All of the foregoing allegations are repeated and re-alleged as though fully set  
26 forth herein.

1           154. Defendants’ decision to detain plaintiffs and members of the Credible Fear  
2 Interview Class for an unreasonable time awaiting their credible fear interview, without a  
3 compelling justification and without a mechanism, protocol, or system to assure a prompt and  
4 fair credible fear interview and determination, is a final agency action. That action violates  
5 5 U.S.C. §§706(1) and (2)(A) and (B).

6           155. Defendants’ decision to detain plaintiffs and members of the Bond Hearing Class  
7 for an unreasonable time awaiting a bond hearing to set reasonable conditions for their release  
8 pending the lengthy proceedings to adjudicate their asylum claim, without a compelling  
9 justification and without a mechanism, protocol, or system to assure a prompt and fair bond  
10 hearing, is a final agency action. That action violates 5 U.S.C. §§706(1) and (2)(A) and (B).

11  
12           156. Defendants’ decision to deny plaintiffs and members of the Bond Hearing Class a  
13 bond hearing with adequate procedural protections, specifically a hearing where the burden of  
14 proof is on the government, a recording or transcript of the hearing available for any subsequent  
15 administrative appeal or habeas petition, and specific, particularized findings of any denial of  
16 release, is a final agency action. That action violates 5 U.S.C. §§706(1) and (2)(A) and (B).

17           157. The APA imposes on federal agencies the duty to conclude matters presented to it  
18 within a “reasonable time.” 5 U.S.C. §555(b).

19           158. The APA prohibits agency action that is “unlawfully withheld or unreasonably  
20 delayed.” 5 U.S.C. §706(1).

21           159. Defendant DHS and its sub-agencies are required to conduct an interview to  
22 assess whether an asylum seeker has a credible fear of persecution. This obligation is triggered  
23 when Defendants learn of an individual’s fear of persecution. *See* 8 U.S.C. §1225(b)(1)(A)(ii).  
24 Asylum seekers are only permitted to raise their claims before an immigration judge after the  
25 asylum officer’s credible fear determination. *See* 8 C.F.R. § 208.30(f), (g).

1           160. Conducting a credible fear interview to determine whether a person seeking  
2 asylum has a credible fear of persecution is a discrete, final agency action that DHS is required to  
3 take.

4           161. Defendants' failure to expeditiously conduct a credible fear interview after  
5 detaining plaintiffs and members of the Credible Fear Interview class constitutes "an agency  
6 action unlawfully withheld or unreasonably delayed" under the APA. *See* 5 U.S.C. § 706(1).

7           162. If the asylum officer determines that an asylum seeker has a credible fear of  
8 persecution, the case is transferred to EOIR for adjudication of the asylum claim by an  
9 immigration judge.

10          163. An asylum seeker in the Bond Hearing Class is entitled to a bond hearing to  
11 assess eligibility for his or her release from DHS custody pending the lengthy proceedings to  
12 adjudicate his or her asylum claim.

13          164. Defendant EOIR's failure to promptly conduct a bond hearing for plaintiffs and  
14 members of the Bond Hearing Class within 7 days violates defendant's legal duty under the APA  
15 to conclude matters presented to it within a reasonable time.

16          165. Defendant EOIR's failure to conduct a bond hearing for plaintiffs and members of  
17 the Bond Hearing Class with appropriate procedural safeguards constitutes an agency action  
18 unlawfully withheld or unreasonably delayed in violation of the APA.

19                                   **COUNT III**  
20                                   **(Violation of Asylum Statute)**

21          166. All of the foregoing allegations are repeated and re-alleged as though fully set  
22 forth herein.

23          167. The Immigration and Nationality Act grants noncitizens fleeing persecution the  
24 opportunity to apply for asylum in the United States. 8 U.S.C. §1225(b)(1) (expedited removal);  
25 8 C.F.R. §§ 235.3(b)(4), 208.30, & 1003.42; 8 U.S.C. §1158(a)(1).  
26

1           168. International law likewise recognizes the fundamental human right to asylum of  
2 persons fleeing for safety from persecution and torture.

3           169. Noncitizens fleeing persecution have a private right of action to vindicate their  
4 right to apply for and receive asylum in the United States.

5           170. Defendants' failure to promptly conduct a credible fear interview for plaintiffs  
6 and members of the Credible Fear Interview Class violates the asylum statute because it  
7 unlawfully infringes on their ability to pursue their asylum claims.

8           171. Defendants' failure to promptly conduct a bond hearing to assess eligibility for  
9 the release of plaintiffs and members of the Bond Hearing Class violates the asylum statute  
10 because it unlawfully infringes on their ability to pursue their asylum claims.

11                                   **VIII. PRAYER FOR RELIEF**

12           Plaintiffs respectfully request that this Court enter judgment against defendants granting  
13 the following relief:

- 14           A. Certify the following **Credible Fear Interview Class**: "All detained asylum seekers  
15 in the United States subject to expedited removal proceedings under  
16 8 U.S.C. §1225(b) who are not provided a credible fear determination within 10 days  
17 of requesting asylum or expressing a fear of persecution to a DHS official."  
18           B. Name plaintiffs as representatives of the Credible Fear Interview Class, and appoint  
19 their counsel as class counsel.  
20           C. Declare that defendants have an obligation to provide Credible Fear Interview Class  
21 members their credible fear interview and determination within 10 days of that  
22 person's requesting asylum or expressing a fear of persecution to any DHS official.  
23           D. Preliminarily and permanently enjoin defendants from not providing Credible Fear  
24 Interview Class members their credible fear determination within 10 days of that  
25 person's requesting asylum or expressing a fear of persecution to any DHS official.  
26

- 1 E. Certify the following **Bond Hearing Class**: “All detained asylum seekers who  
2 entered the United States without inspection, were initially subject to expedited  
3 removal proceedings under 8 U.S.C. §1225(b), were determined to have a credible  
4 fear of persecution, but are not provided a bond hearing with a verbatim transcript or  
5 recording of the hearing within 7 days of requesting a bond hearing.”
- 6 F. Name plaintiffs as representatives of the Bond Hearing Class, and appoint their  
7 counsel as class counsel.
- 8 G. Declare that defendants have an obligation to provide Bond Hearing Class members  
9 a bond hearing within 7 days of their requesting a hearing to set reasonable conditions  
10 for their release pending adjudication of their asylum claim.
- 11 H. Declare that defendants have an obligation to provide Bond Hearing Class members  
12 (including plaintiffs) a bond hearing with adequate procedural safeguards, including a  
13 verbatim transcript or recording of their bond hearing.
- 14 I. Declare that defendant DHS must bear the burden of proof to show continued  
15 detention is necessary in civil immigration proceedings.
- 16 J. Declare that in bond hearings immigration judges must make specific, particularized  
17 written findings as to the basis for denying release from detention, including findings  
18 identifying the basis for finding that the individual is a flight risk or a danger to the  
19 community.
- 20 K. Preliminarily and permanently enjoin defendants from not providing Bond Hearing  
21 Class members their bond hearing with a verbatim transcript or recording of their  
22 bond hearing.
- 23 L. Preliminarily and permanently enjoin defendants from not providing Bond Hearing  
24 Class members their bond hearing within 7 days of the asylum seeker’s request.  
25  
26

1 M. Preliminarily and permanently enjoin defendants from not providing Bond Hearing  
2 Class members bond hearings where defendant DHS bears the burden of proof to  
3 show continued detention is necessary.

4 N. N. Preliminarily and permanently enjoin defendants from not providing Bond  
5 Hearing Class members where immigration judges make specific, particularized  
6 written findings as to the basis for denying release from detention, including findings  
7 identifying the basis for finding that the individual is a flight risk or a danger to the  
8 community.

9 O. Order defendants to pay reasonable attorneys' fees and costs.

10 P. Order all other relief that is just and proper.  
11  
12  
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Dated this 15<sup>th</sup> day of July, 2018.

s/ Matt Adams

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2018, I had the foregoing electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 15<sup>th</sup> day of July, 2018.

s/ Thomas F. Ahearne

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**EXHIBIT B**

*The Honorable Marsha J. Pechman*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

YOLANY PADILLA, ~~on behalf of herself and her 6-year-old son J.A.~~; IBIS GUZMAN, ~~on behalf of herself and her 5-year-old son R.G.~~; BLANCA ORANTES, ~~on behalf of herself and her 8-year-old son A.M.~~; BALTAZAR VASQUEZ, ~~on behalf of himself~~;

Plaintiffs-Petitioners,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (“ICE”); U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”); U.S. CUSTOMS AND BORDER PROTECTION (“CBP”); U.S. CITIZENSHIP AND IMMIGRATION SERVICES (“USCIS”); EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (“EOIR”); ~~U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (“HHS”); OFFICE OF REFUGEE RESETTLEMENT (“ORR”);~~ THOMAS HOMAN, Acting Director of ICE; KIRSTJEN NIELSEN, Secretary of DHS; KEVIN K. McALEENAN, Acting Commissioner of CBP; L. FRANCIS CISSNA, Director of USCIS; ~~ALEX M. AZAR II, Secretary of HHS; SCOTT LLOYD, Director of ORR;~~ MARC J. MOORE, Seattle Field Office Director, ICE; JEFFERSON BEAUREGARD SESSIONS III, United States Attorney General; LOWELL CLARK, warden of the Northwest Detention Center in Tacoma, Washington; CHARLES INGRAM, warden of the Federal Detention Center in SeaTac, Washington; DAVID SHINN, warden of the Federal Correctional Institute in Victorville, California; JAMES JANECKA, warden of the Adelanto Detention Facility;

Defendants-Respondents.

No. 2:18-cv-928 MJP

**SECOND AMENDED  
COMPLAINT:  
CLASS ACTION FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF**

**I. INTRODUCTION**

1  
2 1. This lawsuit initially challenged~~ds~~ the legality of the following three parts of the  
3 federal government's zero-tolerance policy with respect to persons fleeing for safety and asylum  
4 in the United States: (1) family separations, (2) credible fear interviews and determinations, and  
5 (3) the related bond hearings.

6 **A. Family Separations**

7 2. This lawsuit previously challenged~~ds~~ the legality of the government's  
8 zero-tolerance practice of forcibly ripping children away from parents seeking asylum. The day  
9 after plaintiffs filed this suit in the Western District of Washington, however, a federal court in  
10 the Southern District of California issued a nationwide preliminary injunction Order against this  
11 forcible separation. (*Ms. L v. ICE*, -S.D.Cal. case no. 18cv0428 DMS (MDD), docket no. 83).

12 3. With this Second Amended Complaint, plaintiffs confirm that they ~~are not~~  
13 ~~waiving their previously asserted claims for relief with respect to forcible separation, but~~ will not  
14 further pursue those claims in this case ~~pending defendants' promised compliance with the *Ms. L*~~  
15 ~~*v. ICE* Order.~~

16 **B. Credible Fear Interviews & Determinations**

17 4. This lawsuit ~~also~~ challenges the legality of the government's policy or  
18 ~~zero-tolerance~~ practice of excessively prolonging the detention of asylum seekers placed in  
19 expedited removal proceedings by failing to promptly provide them their credible fear interview  
20 and determination. Federal law requires that persons who have asked for asylum or expressed a  
21 fear of persecution must be scheduled for a "credible fear interview" with a DHS official to  
22 determine whether that person should be allowed to proceed with applying for asylum because  
23 he or she has a credible fear of persecution. If the interviewer determines the asylum seeker does  
24 have a credible fear of persecution, the government assigns the case to the federal immigration  
25 court for hearings to adjudicate the merits of that person's asylum claim. If the interviewer  
26 determines the asylum seeker does not have a credible fear of persecution, the asylum seeker can

1 appeal that determination to a federal immigration judge. But in either case, the federal  
 2 government detains the asylum seeker until it determines that she or he has a credible fear of  
 3 persecution. The *Ms. L v. ICE* Order did not address the federal government's lengthy delays in  
 4 conducting these statutorily required credible fear interviews and or determinations.

5 ~~1. — With this Second Amended Complaint, plaintiffs clarify and confirm their full~~  
 6 ~~pursuit of their claims with respect to defendants' excessively prolonging the detention of~~  
 7 ~~asylum seekers by failing to promptly provide the credible fear interviews and determinations~~  
 8 ~~required by federal law.~~

### 9 **D.C. Bond Hearings**

10 5. This lawsuit also challenges the legality of the government's related policy or  
 11 ~~zero-tolerance~~ practice of excessively prolonging the detention of asylum seekers by failing to  
 12 promptly conduct the bond hearings required by federal law after an asylum seeker's positive  
 13 completion of their credible fear interview. Federal law requires that if an asylum seeker enters  
 14 the United States at a location other than a designated "Port Of Entry" and is determined to have  
 15 a credible fear of persecution in his or her credible fear interview, that asylum seeker is entitled  
 16 to an individualized bond hearing before an immigration judge to determine reasonable  
 17 conditions for that person's release from federal detention while he or she awaits the many  
 18 months it takes to adjudicate his or her asylum claim (e.g., a reasonable bond amount or parole  
 19 without posting a monetary bond). This bond hearing must comport with constitutional  
 20 requirements. Yet the government does not establish any timeline for setting this hearing, and as  
 21 a matter of practice, does not even audio record or provide a transcript of this hearing for appeal  
 22 or appellate review (unlike other hearings in removal proceedings before the immigration judge).  
 23 The government also places the burden on asylum seekers to demonstrate in the bond hearing  
 24 that they should not continue to be detained throughout the lengthy immigration proceedings.  
 25 When an immigration judge denies bond, the immigration judge routinely fails to even make  
 26 specific findings but instead simply checks a box on a template order. The *Ms. L v. ICE* Order

1 did not address the federal government's failure to conduct prompt bond hearings that comport  
2 with constitutional requirements.

3 ~~1. With this Second Amended Complaint, plaintiffs specify their claims with respect~~  
4 ~~to defendants' excessively prolonging the detention of asylum seekers by failing to promptly~~  
5 ~~conduct the bond hearings required by federal law.~~

6 **F.D. United States Constitution**

7 6. The Bill of Rights prohibits the federal government from depriving any person of  
8 their liberty without due process of law (U.S. Constitution, 5<sup>th</sup> Amendment). ~~The Bill of Rights~~  
9 ~~also prohibits the federal government from imposing or inflicting on any person any excessive~~  
10 ~~bail or any cruel punishments. (U.S. Constitution, 8<sup>th</sup> Amendment).~~

11 7. Asylum seekers who cross the United States border are persons. They  
12 accordingly have a constitutionally protected liberty interest in (1) ~~remaining together as a~~  
13 ~~family, (2)~~ not being imprisoned for an unreasonable time awaiting their credible fear interview  
14 and determination, and (3) ~~not being imprisoned without the opportunity for a prompt bond~~  
15 hearing that comports with constitutional requirements. And especially with respect to the  
16 federal government's avowed ~~zero-tolerance~~ policy or practice to deter criminal violations of  
17 federal immigration laws, asylum seekers also have a constitutionally protected interest in  
18 (3) ~~not being subjected to prolonged imprisonment for deterrence or penalty reasons unrelated~~  
19 to adjudicating the merits of their individual asylum claim, ~~and (5) not being subjected to cruel~~  
20 ~~punishments though unreasonably delayed or denied bond or parole.~~

21 8. With this Second Amended Complaint, plaintiffs specify with more particularity  
22 how defendants' implementation of the federal government's ~~zero-tolerance policy~~ policies and  
23 practices with respect to persons fleeing for safety and seeking asylum in the United States  
24 violates the United States Constitution.

**G.E. Federal Law**

9. Federal law prohibits final agency action that is arbitrary, capricious, unlawfully withheld, or unreasonably delayed (e.g., Administrative Procedures Act, 5 U.S.C. §706). Federal law also grants persons fleeing persecution the right to apply for safety and asylum in the United States (e.g., 8 U.S.C. §§1225 & 1158; 8 C.F.R. §§235.3, 208.30, & 1003.42).

10. Federal law accordingly prohibits federal agencies from arbitrarily or capriciously depriving an asylum seeker of their child, their prompt credible fear interview and determination, or their prompt bond hearing. Federal law prohibits federal agencies from unlawfully withholding or unreasonably delaying an asylum seeker's reunification with their child, an asylum seeker's credible fear interview and determination, or an asylum seeker's bond hearing. And federal law prohibits federal agencies from impeding or seeking to deter an asylum seeker's legal right to apply for asylum.

11. With this Second Amended Complaint, plaintiffs specify with more particularity how defendants' implementation of the federal government's ~~zero-tolerance-policy-policies and practices~~ with respect to persons fleeing for safety and asylum in the United States violates federal law.

**H.F. Requested Relief**

12. With respect to (1) ~~family-separations, (2)~~ credible fear interviews and determinations; and (32) the related bond hearings, plaintiffs request injunctive relief requiring defendants to cease their policies and practices implementing the federal government's ~~zero-tolerance-policy~~ or practice in violation of the United States Constitution and federal law. Plaintiffs request declaratory relief to terminate the parties' disagreement with respect to whether (and how) defendants' implementation of the federal government's ~~zero-tolerance-policy-policies~~ or practices with respect to persons fleeing for safety and asylum in the United States violates the United States Constitution and federal law. Lastly, plaintiffs request whatever additional relief this Court finds warranted, just, or equitable.

## II. JURISDICTION

13. This case arises under the Fifth ~~and Eighth~~ Amendments of the United States Constitution, the Administrative Procedures Act (“APA”), and federal asylum statutes. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (habeas jurisdiction); and Article I, § 9, clause 2 of the United States Constitution (“Suspension Clause”).

14. The original plaintiffs in this case were all in custody for purposes of habeas jurisdiction when this action was filed on June 25, 2018.

15. After this action was filed, plaintiffs Padilla, ~~Orantes, and Guzman~~ ~~were~~ eventually released from detention after ~~they were~~ eventually provided ~~a her~~ credible fear interview and individualized bond hearings before an immigration judge. At the time this ~~Second~~ Amended Complaint is electronically filed on ~~August 22~~~~July 15~~, 2018, plaintiffs ~~Guzman, Orantes, and~~ Vasquez ~~is~~ are still in custody for purposes of habeas jurisdiction.

16. At the time this ~~Second~~ Amended Complaint is electronically filed on ~~August 22~~~~July 15~~, 2018, all ~~but one of~~ the children that the federal government took away from plaintiffs ~~have been returned to their mothers after roughly approximately two months of being separated. are still in custody for purposes of habeas jurisdiction. (That one child, Yolany Padilla’s 6-year-old son, was finally returned to his mother yesterday, July 14, 2018.)~~

## III. VENUE

17. Venue lies in this District under 28 U.S.C. § 1391 because a substantial portion of the relevant facts occurred within this District. Those facts include defendants’ detention of plaintiffs Padilla, Guzman, and Orantes in this District while forcibly separated from their children, failure in this District to promptly conduct a credible fear interview and determination for their asylum claims, and failure in this District to promptly conduct bond hearings that comport with constitutional requirements to set reasonable conditions for release pending adjudication of their asylum claims.

IV. PARTIES

18. Plaintiff **Yolany Padilla** is a human being seeking asylum for herself and her 6-year-old son (J.A) in the United States. She is a citizen of Honduras.

19. Plaintiff **Ibis Guzman** is a human being seeking asylum for herself and her 5-year-old son (R.G.) in the United States. She is a citizen of Honduras.

20. Plaintiff **Blanca Orantes** is a human being seeking asylum for herself and her 8-year-old son (A.M.) in the United States. She is a citizen of El Salvador.

21. Plaintiff **Baltazar Vasquez** is a human being seeking asylum in the United States. He is a citizen of El Salvador.

22. Defendant U.S. Immigration and Customs Enforcement (“ICE”) is the federal government agency that carries out removal orders and oversees immigration detention. ICE is part of DHS. ICE’s responsibilities include determining whether an asylum seeker will be released and how soon his or her case will be submitted for a credible fear interview and subsequent proceedings on the merits before the immigration court. ICE’s local field office in Tukwila, Washington, is responsible for determining whether plaintiffs detained in Washington will be released, and how soon their cases will be submitted for credible fear interview and subsequent proceedings before the immigration court.

23. Defendant U.S. Department of Homeland Security (“DHS”) is the federal government agency that enforces immigration laws of the United States. DHS’s responsibilities include determining whether an asylum seeker will be released and how soon his or her case will be submitted for a credible fear interview and subsequent proceedings before the immigration court. DHS’s local field office in Tukwila, Washington, is responsible for determining whether plaintiffs detained in Washington will be released, and how soon their cases will be submitted for credible fear interview and subsequent proceedings before the immigration court.

24. Defendant U.S. Customs and Border Protection (“CBP”) is the federal government agency that conducts the initial processing and detention of asylum seekers crossing



1 the U.S. border. CBP is part of DHS. CBP's responsibilities include determining whether an  
 2 asylum seeker will be released and how soon his or her case will be submitted for a credible fear  
 3 interview and determination.

4 25. Defendant U.S. Citizenship and Immigration Services ("USCIS") is the federal  
 5 government agency that, through its asylum officers, interviews asylum seekers to determine  
 6 whether they should be assigned to the immigration court to be allowed to proceed with applying  
 7 for asylum because they have a credible fear of persecution. USCIS is a part of DHS.

8 26. Defendant Executive Office for Immigration Review ("EOIR") is the federal  
 9 government agency that is responsible for conducting immigration court proceedings, including  
 10 adjudicating plaintiffs' asylum claims in removal proceedings and conducting individual bond  
 11 hearings for persons in removal proceedings. EOIR is a part of the Department of Justice.

12 ~~27. Defendant U.S. Department of Health and Human Services ("HHS") is the federal~~  
 13 ~~government agency that has been delegated authority to make custody determinations for~~  
 14 ~~"unaccompanied" noncitizen children.~~

15 ~~28.27. Defendant Office of Refugee Resettlement ("ORR") is the federal government~~  
 16 ~~agency that that has been delegated responsibility to care for and place "unaccompanied"~~  
 17 ~~noncitizen children. ORR is part of HHS.~~

18 ~~29.28.~~ Defendant Thomas Homan is sued in his official capacity as the Director of ICE,  
 19 and is a legal custodian of plaintiff Vasquez and putative class members~~detained plaintiffs.~~

20 ~~30.29.~~ Defendant Marc J. Moore is sued in his official capacity as the ICE Seattle Field  
 21 Office Director, and is a legal custodian of detained plaintiffs.

22 ~~31.30.~~ Defendant Kirstjen Nielsen, is sued in her official capacity as the Secretary of  
 23 DHS. In this capacity, she directs DHS, ICE, CBP, and USCIS. As a result, defendant Nielsen  
 24 has responsibility for the administration of immigration laws pursuant to 8 U.S.C. §1103 and is a  
 25 legal custodian of detained plaintiffs.

~~32.31.~~ Defendant Kevin K. McAleenan is sued in his official capacity as the Commissioner of CBP.

~~33.32.~~ Defendant L. Francis Cissna is sued in his official capacity as the Director of USCIS.

~~34.— Defendant Alex M. Azar II is sued in his official capacity as the Secretary of HHS.~~

~~35.— Defendant Scott Lloyd is sued in his official capacity as the Director of ORR.~~

~~36.33.~~ Defendant Jefferson Beauregard Sessions III is sued in his official capacity as the United States Attorney General. In this capacity, he directs agencies within the United States Department of Justice, including EOIR. Defendant Sessions has responsibility for the administration of immigration laws pursuant to 8 U.S.C. §1103, oversees defendant EOIR, and is empowered to grant asylum or other relief, including custody determinations made for persons in removal proceedings.

~~37.34.~~ Defendant Lowell Clark is sued in his official capacity as the warden of the Northwest Detention Center in Tacoma, Washington.

~~38.35.~~ Defendant Charles Ingram is sued in his official capacity as the warden of the Federal Detention Center in SeaTac, Washington.

~~36.~~ Defendant David Shinn is sued in his official capacity as the warden of the Federal Correctional Institute in Victorville, California.

~~39.37.~~ Defendant James Janecka is sued in his official capacity as the warden of the Adelanto Detention Facility in Adelanto, California.

## **V. FACTS**

### **A. Seeking Asylum**

~~40.38.~~ Federal law allows a person to seek asylum in the United States.

~~41.39.~~ Plaintiffs are persons seeking asylum in the United States.

1       ~~42.——Some asylum seekers cross the U.S.-Mexico border at one of the “Ports Of Entry”~~  
2 ~~designated by the United States government.~~

3       ~~43.——An asylum seeker who crosses the border at a designated Port Of Entry and~~  
4 ~~openly declares them self to a CBP agent is referred to as being an “arriving” asylum seeker.~~

5       ~~44.——An asylum seeker who crosses the border at a Port Of Entry and does not openly~~  
6 ~~declares them self to a CBP agent is referred to as “entering without inspection.”~~

7       ~~45.——An asylum seeker who crosses the U.S.-Mexico border at a location that is~~  
8 ~~between the Ports Of Entry designated by the United States government is also referred to as~~  
9 ~~“entering without inspection.”~~

10       46.40. Plaintiff **Yolany Padilla** and her 6-year-old son J.A. are asylum seekers who fled  
11 physical danger and persecution in Honduras.

12       47.41. On or about May 18, 2018, plaintiff Yolany Padilla and her 6-year-old son J.A.  
13 crossed the U.S.-Mexico border ~~at a location between Ports Of Entry designated by the United~~  
14 ~~States government.~~ They were arrested by a CBP agent as they were making their way to the  
15 closest Port Of Entry. She informed the CBP agent that they were seeking asylum.

16       48.42. Plaintiff **Ibis Guzman** and her 5-year-old son R.G. are asylum seekers who fled  
17 physical danger and persecution in Honduras.

18       49.43. On or about May 16, 2018, plaintiff Ibis Guzman and her 5-year-old son R.G.  
19 crossed the U.S.-Mexico border ~~at a location between Ports Of Entry designated by the United~~  
20 ~~States government.~~ They were arrested by a CBP agent. She informed the CBP agent that they  
21 were seeking asylum.

22       50.44. Plaintiff **Blanca Orantes** and her 8-year-old son A.M. are asylum seekers who  
23 fled physical danger and persecution in El Salvador.

24       51.45. On or about May 21, 2018, plaintiff Blanca Orantes and her 8-year-old son A.M.  
25 crossed the U.S.-Mexico border ~~at a location between Ports Of Entry designated by the United~~  
26

1 ~~States government~~. They immediately walked to the CBP station to request asylum, and were  
 2 arrested by a CBP agent. She informed the CBP agent that they were seeking asylum.

3 ~~52:46.~~ Plaintiff **Baltazar Vasquez** is an asylum seeker who fled physical danger and  
 4 persecution in El Salvador.

5 ~~53:47.~~ On or about June 1, 2018, Baltazar Vasquez crossed the U.S.-Mexico border ~~at a~~  
 6 ~~location between Ports Of Entry designated by the United States government~~. He was arrested  
 7 by a CBP agent, and informed the CBP agent that he was seeking asylum.

8 **B. Defendants' Zero-Tolerance Policy or Practice**

9 ~~54:48.~~ Defendant ~~Attorney General~~ Sessions made an announcement about the federal  
 10 government's "Zero-Tolerance Policy" on April 6, 2018, *See*  
 11 [https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-](https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry)  
 12 [illegal-entry](https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry).

13 ~~55:49.~~ The federal government's zero-tolerance policy was designed to be a coordinated  
 14 effort to deter asylum seekers entering the country and exercising their right to apply for asylum  
 15 by criminally prosecuting them, forcibly separating them from their children, and imposing  
 16 prolonged, uncertain imprisonment (euphemistically called "detention") on them.

17 ~~56:50.~~ The federal government's zero-tolerance policy has been implemented against  
 18 asylum seekers who enter the country without inspection requesting asylum.

19 ~~57:51.~~ The federal government's zero-tolerance policy has also been implemented  
 20 against asylum seekers who appear at a Port Of Entry to request asylum.

21 **C. Promptly Taking Children Away From Parents Seeking Asylum**

22 ~~58:52.~~ One part of the federal government's zero-tolerance policy or practice is was to  
 23 promptly take children away from parents seeking asylum in the United States.

24 ~~59:53.~~ The federal government would ~~sends~~ the parent and child to separate federal  
 25 detention facilities – often in different states thousands of miles away from each other.  
 26

1 ~~60.54.~~ A child's forced separation from a parent causes the child severe trauma. This  
2 damage is even worse for children who are already traumatized from fleeing danger and  
3 persecution in their home country. The cognitive and emotional damage caused by a child's  
4 forced separation from a parent can be permanent.

5 ~~61.55.~~ A parent's forced separation from their child is also deeply damaging to the  
6 parent. This damage is even worse for parents who are already traumatized from fleeing danger  
7 and persecution in their home country, are given little to no information regarding the well-being  
8 or whereabouts of their child, and fear they may never see their child again.

9 ~~62.56.~~ The federal government promptly ~~took~~ children away from parents seeking  
10 asylum in the United States without any demonstration in a hearing that that parent is unfit or  
11 presents any danger to the child.

12 ~~63.57.~~ The federal government promptly ~~took~~ children away from parents seeking  
13 asylum in the United States without any evidence or accusation that the parent seeking asylum is  
14 an unfit parent, or presents a danger to the child, or is not acting in the child's best interest, or is  
15 a threat to the child's safety, or abused the child, or neglected the child.

16 ~~64.58.~~ The federal government promptly ~~took~~ children away from parents seeking  
17 asylum in the United States to penalize and deter persons from seeking asylum.

18 ~~65.59.~~ The federal government promptly ~~took~~ children away from parents seeking  
19 asylum in the United States as part of its zero-tolerance policy against criminal violations of  
20 federal immigration laws.

21 ~~66.60.~~ Plaintiffs Yolany Padilla, Ibis Guzman, and Blanca Orantes are parents who  
22 sought asylum and were (1) detained in immigration custody by defendants in Washington State  
23 and (2) separated from a minor child by defendants without any demonstration in a hearing that  
24 that parent is unfit or presents a danger to the child.

25 ~~67.61.~~ When plaintiff **Yolany Padilla** and her 6-year-old son J.A were taken into  
26 custody, a federal agent promptly announced that Yolany Padilla's son would be taken away

1 from her. Her 6-year-old son clutched his mother's shirt and said, "no, mommy, I don't want to  
2 go." She reassured her son that any separation would be short, and that everything would be  
3 okay. She was able to stay with her son as they were transferred to one of the federal detention  
4 buildings that detainees commonly refer to as "the hielera" ("the freezer") because of its cold  
5 temperatures. Once they arrived, Yolany Padilla's 6-year-old son was forcibly taken away from  
6 her without explanation.

7 ~~68-62.~~ Yolany Padilla's 6-year-old son was taken away from her without any hearing,  
8 and without any accusation or evidence that she is in any way an unfit parent, or that she is in  
9 any way not acting in his best interest fleeing for safety in the United States, or that she is in any  
10 way a threat to his safety, or that she in any way abused him, or that she in any way neglected  
11 him.

12 ~~69-63.~~ Yolany Padilla was then transferred to another federal facility in Laredo, Texas  
13 about three days later. The federal officers in that facility took her son's birth certificate from  
14 her. When she asked for it back, she was told the immigration authorities had it. No one has  
15 returned her son's birth certificate to her.

16 ~~70-64.~~ About twelve days later, Yolany Padilla was transferred to the Federal Detention  
17 Center in SeaTac, Washington.

18 ~~71-65.~~ Despite repeated inquiries into her son's whereabouts, Yolany Padilla was not  
19 provided any information about her son until about a month into her detention, when the  
20 Honduran consul visited the detention center and she explained she had no news of her son.  
21 Soon thereafter she was given a piece of paper saying her son had been put in a place called  
22 "Cayuga Center" in New York. That piece of paper also had a phone number, but she was not  
23 able to call her son that day because she did not have money to make a long distance phone call.

24 ~~72-66.~~ The next day, someone gave Yolany Padilla the opportunity to call her son for  
25 about ten minutes. Her 6-year-old son mostly cried quietly.  
26

1 ~~73-67.~~ Yolany Padilla was not released from federal imprisonment until July 6, 2018,  
2 after an immigration judge finally granted her a bond.

3 ~~74-68.~~ Yolany Padilla's 6-year-old son was not released from federal imprisonment until  
4 July 14, 2018. That was almost two months after the federal government forcibly took him away  
5 from his mom.

6 ~~75-69.~~ CBP transported plaintiff **Ibis Guzman** and her 5-year-old son R.G. to one of the  
7 federal detention buildings in Texas that detainees commonly refer to as "the hielera" ("the  
8 freezer") because of its cold temperatures. One CBP agent questioned Ibis Guzman, and  
9 another CBP agent forcibly took her son away stating she would see her son again in three days.

10 ~~76-70.~~ Ibis Guzman's 5-year-old son was taken away from her without any hearing, and  
11 without any accusation or evidence that she is in any way an unfit parent, or that she is in any  
12 way not acting in his best interest fleeing for safety in the United States, or that she is in any way  
13 a threat to his safety, or that she in any way abused him, or that she in any way neglected him.

14 ~~77-71.~~ After three days, Ibis Guzman was transferred to a different CBP facility in  
15 Texas. When she asked the federal agents there about the reunification with her son that the  
16 CBP agent had promised, they told her they did not know anything about her son's whereabouts.

17 ~~78-72.~~ Ibis Guzman was then transferred to another federal facility in Laredo, Texas,  
18 where she was detained without any knowledge of the whereabouts of her 5-year-old son and  
19 without any means to contact him. She did not receive any information about him during this  
20 time, despite her repeated attempts to obtain such information.

21 ~~79-73.~~ About two weeks later, Ibis Guzman was transferred to the Federal Detention  
22 Center in SeaTac, Washington.

23 ~~80-74.~~ Ibis Guzman was not provided any information about her 5-year-old son until  
24 about a week later, when she was told that her son had been given to a place called "Baptist  
25 Child and Family Services" in San Antonio, Texas. But she was still not able to contact him.  
26

1 75. On June 20, 2018, Ibis Guzman was transferred to the Northwest Detention  
2 Center in Tacoma, Washington, ~~where she continues to be held, separated from her 5-year-old~~  
3 ~~son.~~

4 76. Ibis Guzman was denied bond by the immigration judge at her bond hearing on  
5 July 3, 2018.

6 ~~81.77.~~ She was not released until on or about July 31, 2018, after the federal government  
7 ~~was forced in order to comply with the preliminary injunction in *Ms. L.*, and thereafter reunited~~  
8 ~~with her child.~~

9 ~~82.78.~~ CBP transported plaintiff **Blanca Orantes** and her 8-year-old son A.M. to a  
10 federal detention facility in Texas. CBP agents led Blanca Orantes into one of the federal  
11 detention buildings that detainees commonly refer to as “the hielera” (“the freezer”) because of  
12 its cold temperatures, and took her 8-year-old son to another part of that detention facility.

13 ~~83.79.~~ While a CBP agent was later interviewing Blanca Orantes, another agent brought  
14 her 8-year-old son to her and told her to “say goodbye” to him because they were being  
15 separated. Her 8-year-old son began crying and pleading for his mom not to leave him. ~~She has~~  
16 ~~not seen her son since then.~~

17 ~~84.80.~~ Blanca Orantes’ 8-year-old son was taken away from her without any hearing,  
18 and without any accusation or evidence that she is in any way an unfit parent, or that she is in  
19 any way not acting in his best interest fleeing for safety in the United States, or that she is in any  
20 way a threat to his safety, or that she in any way abused him, or that she in any way neglected  
21 him.

22 ~~85.81.~~ On or around May 24, 2018, Blanca Orantes was handcuffed and taken to court.  
23 She pled guilty to improper entry under 8 U.S.C. §1325 and was sentenced to time served. She  
24 was then returned to her cell.

25 ~~86.82.~~ About nine days later, Blanca Orantes was transported to the Federal Detention  
26 Center in SeaTac, Washington.



1 87-83. The federal government did not provide Blanca Orantes any information about  
2 her 8-year-old son until June 9, 2018, when an ICE officer handed her a slip of paper saying her  
3 son was being held at place called “Children’s Home of Kingston” in Kingston, New York.

4 84. On June 20, 2018, Blanca Orantes was transferred to the Northwest Detention  
5 Center in Tacoma, Washington, where she was finally allowed to speak to her 8-year-old son by  
6 telephone. ~~To date, she has not been allowed to see her 8-year-old son, and has rarely been~~  
7 ~~allowed to speak to him by phone.~~

8 85. Blanca Orantes was denied bond by the immigration judge at her bond hearing on  
9 July 16, 2018.

10 88-86. She was not released until on or about July 24, 2018, in order to comply with the  
11 preliminary injunction in *Ms. L.*, and thereafter reunited with her child.

12 **D. Failing To Promptly Provide The Credible Fear Interview & Determination**  
13 **Required By Federal Law**

14 89-87. One part of the federal government’s ~~zero-tolerance~~ policy or practice is to keep  
15 asylum seekers in limbo in federal detention by delaying the threshold credible fear interview to  
16 which asylum seekers are entitled under federal law.

17 90-88. Detained asylum seekers who are subject to expedited removal are not permitted  
18 to move forward with their asylum claims until a credible fear determination has been made by a  
19 DHS official.

20 91-89. The federal government keeps asylum seekers in limbo in federal detention by  
21 delaying their credible fear interview in part to penalize and deter persons from seeking asylum.

22 92-90. The federal government keeps asylum seekers in limbo in federal detention by  
23 delaying their credible fear interview ~~as part of its zero-tolerance policy against criminal~~  
24 ~~violations of federal immigration laws.~~

25 93-91. The federal government has not established any procedural timeframes for  
26 providing asylum seekers the credible fear interview and determinations required by federal law.

1 ~~94.92.~~ Plaintiffs Yolany Padilla, Ibis Guzman, Blanca Orantes, and Baltazar Vasquez are  
2 detained asylum seekers subject to expedited removal proceedings under 8 U.S.C. § 1225(b) who  
3 were not provided a credible fear interview and determination within 10 days of requesting  
4 asylum or expressing a fear of persecution to a DHS official.

5 ~~95.93.~~ When plaintiff **Yolany Padilla** first spoke with the CBP agent on or about  
6 May 18, 2018, she told the CBP agent that she and her son were requesting asylum.

7 ~~96.94.~~ Neither Yolany Padilla nor her son were provided a credible fear interview within  
8 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

9 ~~97.95.~~ Neither Yolany Padilla nor her son were provided a credible fear interview as of  
10 the date this lawsuit was originally filed on June 25, 2018.

11 ~~98.96.~~ Instead, Yolany Padilla was not provided her credible fear interview until July 2,  
12 2018. That was more than a month after federal officials imprisoned her. The DHS official  
13 conducting her credible fear interview determined that Yolany Padilla does have a credible fear  
14 of persecution, and therefore- assigned her asylum claim to immigration court for adjudication on  
15 the merits

16 ~~99.97.~~ When plaintiff **Ibis Guzman** first spoke with the CBP agent on or about May 16,  
17 2018, she told the CBP agent that she and her son were requesting asylum.

18 ~~100.98.~~ Neither Ibis Guzman nor her son were provided a credible fear interview  
19 within 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

20 ~~101.99.~~ Neither Ibis Guzman nor her son were provided a credible fear interview  
21 as of the date this lawsuit was originally filed on June 25, 2018.

22 ~~102.100.~~ Instead, Ibis Guzman was not provided her credible fear interview until  
23 June 27, 2018. That was more than a month after federal officials imprisoned her. The DHS  
24 official conducting her credible fear interview determined that Ibis Guzman does have a credible  
25 fear of persecution, and therefore assigned her asylum claim to immigration court for  
26 adjudication on the merits.

1 ~~103.101.~~ When plaintiff **Blanca Orantes** first spoke with the CBP agent on or  
2 about May 21, 2018, she told the CBP agent that she and her son were requesting asylum.

3 ~~104.102.~~ Neither Blanca Orantes nor her son were provided a credible fear  
4 interview within 10 days of requesting asylum or expressing a fear of persecution to a DHS  
5 official.

6 ~~105.103.~~ Neither Blanca Orantes nor her son were provided a credible fear  
7 interview as of the date this lawsuit was originally filed on June 25, 2018.

8 ~~106.104.~~ Instead, Blanca Orantes was not provided her credible fear interview until  
9 June 27, 2018. That was more than a month after federal officials imprisoned her. The DHS  
10 official conducting her credible fear interview determined that Blanca Orantes does have a  
11 credible fear of persecution, and therefore assigned her asylum claim to immigration court for  
12 adjudication on the merits.

13 ~~107.105.~~ When plaintiff **Baltazar Vasquez** first spoke with the CBP agent on or  
14 about June 1, 2018, he told the CBP agent that he was requesting asylum.

15 ~~108.106.~~ Baltazar Vasquez was not provided a credible fear interview within  
16 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

17 ~~109.107.~~ Baltazar Vasquez was not provided a credible fear interview as of the date  
18 this lawsuit was originally filed on June 25, 2018.

19 ~~110.108.~~ Baltazar Vasquez was not ~~scheduled for provided~~ a credible fear interview  
20 ~~until after as of the date~~ this First Amended Complaint ~~was~~ electronically filed on July 15,  
21 2018.

22 ~~111.109.~~ Baltazar Vasquez was not provided his credible fear interview until July  
23 31, 2018. That was almost two months after federal officials imprisoned him.- The DHS official  
24 conducting his credible fear interview determined that Baltazar Vasquez does have a credible  
25 fear of persecution, and therefore referred his case assigned his asylum claim to an immigration  
26 court for adjudication on of the merits of his asylum claim.

1 ~~112.110.~~ Baltazar Vasquez is currently imprisoned at the Adelanto Detention  
 2 facility in the Bureau of Prison's Federal Correctional Institute in Adelanto Victorville,  
 3 California.

4 **E. Failing To Promptly Provide The Bond Hearing Required By Federal Law**

5 ~~113.111.~~ One part of the federal government's ~~zero-tolerance~~ policy or practice is to  
 6 prolong imprisonment without a proper bond hearing for asylum seekers who entered the United  
 7 States without inspection.

8 ~~114.112.~~ The federal government keeps asylum seekers in limbo in federal  
 9 detention by delaying their bond hearing in part to penalize and deter persons from seeking  
 10 asylum.

11 ~~115.113.~~ The federal government keeps asylum seekers in limbo in federal  
 12 detention by delaying their bond hearing ~~as part of its zero-tolerance policy against criminal~~  
 13 ~~violations of federal immigration laws.~~

14 ~~116.114.~~ The federal government has not established any procedural timeframes for  
 15 timely providing the bond hearings required by federal law. The federal government has not  
 16 established basic procedural safeguards for bond hearings such as verbatim transcripts or audio  
 17 recordings of bond hearings. The absence of such basic safeguards impedes an imprisoned  
 18 asylum seeker's ability to meaningful appeal the denial of bond in their individual case as not  
 19 being based on evidence of legally relevant factors (~~i.e., their~~ being a flight risk or danger to the  
 20 community) instead of legally irrelevant factors (e.g., the zero-tolerance policy's general goal of  
 21 punishing and deterring asylum seekers). Defendant EOIR maintains audio recordings of  
 22 proceedings before an Immigration Judge other than bond hearings, and provides verbatim  
 23 transcripts on appeals to the Board of Immigration Appeals. But ~~D~~defendant EOIRs does not  
 24 maintain audio recordings of an asylum seeker's bond hearing or provide verbatim transcripts for  
 25 appeal of bond hearing determinations. Indeed, when an immigration judge denies bond, they  
 26 routinely do not even make specific, particularized findings, and instead simply checking a box

1 on a template order. Moreover, Defendants place the burden of proof on the  
 2 immigrant noncitizen to demonstrate that they should not continue to be detained throughout their  
 3 lengthy immigration proceedings.

4 ~~117.115.~~ Plaintiff **Yolany Padilla** is an asylum seeker who originally entered the  
 5 United States without inspection, was initially subject to expedited removal proceedings under  
 6 8 U.S.C. §1225(b) and detained, was determined to have a credible fear of persecution, but was  
 7 not provided a timely bond hearing with a verbatim transcript or audio recording.

8 ~~118.116.~~ The federal government did not provide Yolany Padilla a bond hearing  
 9 until after she filed this lawsuit. At the conclusion of that bond hearing, an order was issued  
 10 allowing her to be released from federal detention upon posting an \$8,000~~en~~ bond pending the  
 11 adjudication of her asylum claim on the merits. To her knowledge, there is no verbatim  
 12 transcript or recording of her bond hearing. At the bond hearing, the immigration judge placed  
 13 the burden of proof on Yolany Padilla to demonstrate that she was qualified for a bond.

14 ~~119.117.~~ Plaintiffs **Ibis Guzman** is a detained asylum seeker who originally entered  
 15 the United States without inspection, was initially subject to expedited removal proceedings  
 16 under 8 U.S.C. §1225(b), was determined to have a credible fear of persecution, but was not  
 17 provided a timely bond hearing with a verbatim transcript or audio recording.

18 ~~120.118.~~ The federal government did not provide Ibis Guzman a bond hearing until  
 19 after she filed this lawsuit. At the bond hearing, the immigration judge placed the burden of  
 20 proof on Ibis Guzman to demonstrate that she qualified for a bond. At the conclusion of that  
 21 bond hearing, an immigration judge issued an order denying her release on *any* bond amount  
 22 pending the adjudication of her asylum claim on the merits.

23 ~~121.119.~~ The immigration judge did not make specific, particularized findings for  
 24 the basis of the denial. The immigration judge circled the preprinted words “Flight Risk” on a  
 25 form order, rendering her ineligible for bond even though a DHS official had already determined  
 26

1 she has a credible fear of persecution and even though the federal government has taken away  
2 her 6-year-old son.

3 ~~122.~~—The immigration judge provided no written explanation for circling “Flight Risk”  
4 or the factors and evidence considered in making that conclusion to deny bond. Per defendant  
5 EOIR’s practice, there is no verbatim transcript or recording of her bond hearing. At the bond  
6 hearing, the immigration judge placed the burden on Ibis Guzman to demonstrate that she was  
7 qualified for a bond.

8 ~~123.~~—~~At the time this Amended Complaint is electronically filed on July 15, 2018, Ibis~~  
9 ~~Guzman is still imprisoned in federal detention.~~

10 120. She was not released until on or about July 31, 2018, in order to comply with the  
11 preliminary injunction in Ms. L.L.

12 ~~124.121.~~ Plaintiff **Blanca Orantes** is a detained asylum seeker who originally  
13 entered the United States without inspection, was initially subject to expedited removal  
14 proceedings under 8 U.S.C. §1225(b), was determined to have a credible fear of persecution once  
15 she was eventually provided her credible fear interview and determination, but was not provided  
16 a bond hearing with a verbatim transcript or recording of the hearing within 7 days of requesting  
17 a bond hearing.

18 122. Blanca Orantes ~~was not has now been told she will be~~ provided a bond hearing  
19 ~~until~~ on July 16, 2018. At the bond hearing, the immigration judge placed the burden of proof on  
20 Blanca Orantes to demonstrate that she qualified for a bond. At the conclusion of that bond  
21 hearing, an immigration judge issued an order denying her release on any bond amount pending  
22 the adjudication of her asylum claim on the merits.

23 123. The immigration judge did not make specific, particularized findings for the basis  
24 of the denial, and even failed to check the box indicating why she was denied bond on the  
25 template order. Per defendant EOIR’s practice, there is no verbatim transcript or recording of her  
26

1 bond hearing. At the bond hearing the immigration judge placed the burden on Blanca Orantes  
2 to demonstrate that she was qualified for a bond.

3 124. She was not released until on or about July 23, 2018, after the federal government  
4 was forced in order to comply with the preliminary injunction in *Ms. L.*, and thereafter reunited  
5 her with her child.

6 ~~125. She accordingly still has not been provided a bond hearing with a verbatim~~  
7 ~~transcript or recording of the hearing.~~

8 125. Plaintiff Baltazar Vasquez is a detained asylum seeker who originally entered  
9 the United States without inspection ~~(thus initially triggering potential expedited removal~~  
10 ~~proceedings under 8 U.S.C. §1225(b)),~~ was initially subject to expedited removal proceedings  
11 under 8 U.S.C. §1225(b), was determined to have a credible fear of persecution once he was  
12 eventually provided his credible fear interview and determination, but was not provided a bond  
13 hearing with a verbatim transcript or recording of the hearing within 7 days of requesting a bond  
14 hearing but as of the time this Amended Complaint is electronically filed still has not been  
15 provided his credible fear interview and determination, and accordingly still has not been  
16 provided a bond hearing with a verbatim transcript or recording of the hearing.

17 126. The federal government did not provide Baltazar Vasquez a bond hearing until  
18 August 20, 2018. At the bond hearing, the immigration judge placed the burden of proof on  
19 Baltazar Vasquez to demonstrate that he qualified for a bond. At the conclusion of that bond  
20 hearing, an order was issued allowing him to be released from federal detention upon posting a  
21 \$9,000 bond pending the adjudication of his asylum claim on the merits. There is no verbatim  
22 transcript or recording of his bond hearing.

## 23 **VI. CLASS ALLEGATIONS**

24 127. The named plaintiffs are asylum seekers who filed this suit on behalf of  
25 themselves and their family members being detained in federal detention.



1 ~~128.~~—The named plaintiffs also bring this suit as a class action under Fed.R.Civ.P. 23(b)  
 2 on behalf of the other similarly situated persons specified in the ~~two~~~~three~~ classes of asylum  
 3 seekers specified in Part VI of this Second Amended Complaint.

4 ~~—“Family Separation Class”~~

5 ~~130.~~—As previously noted, plaintiffs will not be currently pursuing their  
 6 family separation claim in this case pending defendants’ promised  
 7 compliance with the *Ms. L v. ICE* Order noted in paragraph 2 of this  
 8 Amended Complaint. This Amended Complaint nonetheless identifies the  
 9 following class in case defendants’ obligations are modified in that Order  
 10 or their compliance falls short.

11 ~~131.~~—With respect to plaintiffs’ claims concerning the legality of the  
 12 government’s practice of taking children away from parents seeking  
 13 asylum, plaintiffs seek to represent the following class (the “**family**  
 14 **separation class**”):

15 —All parents who sought asylum and were (1) detained in immigration  
 16 custody by defendants in Washington State and (2) separated from a minor  
 17 child by defendants absent a demonstration in a hearing that that parent is  
 18 unfit or presents a danger to the child.

19 ~~133.~~—Plaintiffs allege the following on information and belief: At least  
 20 fifty parents currently fit within the **family separation class**. Defendants  
 21 should know the precise number since the members of this class should be  
 22 readily ascertainable through defendants’ records.

23 ~~134.~~—The **family separation class** satisfies Rule 23(a)(1). This class is  
 24 so numerous that joinder of all class members is impracticable.

25 ~~135.~~—The **family separation class** satisfies Rule 23(a)(2). There are  
 26 questions of law or fact common to this class. Given the definition of this



class, its members all share the same common factual situation of being subject to defendants' practice of separating asylum-seeking parents from their minor child absent a demonstration in a hearing that that parent is unfit or presents a danger to their child. The members of this class share common questions of law governing whether defendants' practice of taking children away from class members seeking asylum is legal under the Fifth Amendment, Eighth Amendment, APA, or federal asylum statutes.

136. ~~The **family separation class** satisfies Rule 23(a)(3). The claims of plaintiffs Padilla, Guzman, and Orantes concerning the legality of defendants' practice of taking children away from parents seeking asylum are typical of the claims of class members. As noted in the prior paragraph, the definition of this class dictates that plaintiffs Padilla, Guzman, and Orantes share with the other class members the same common factual situation and the same common questions of law under the Fifth Amendment, Eighth Amendment, APA, and federal asylum statutes.~~

137. ~~The **family separation class** satisfies Rule 23(a)(4). Plaintiffs Padilla, Guzman, and Orantes will fairly and adequately protect the interests of that class. They are represented by counsel from the Northwest Immigrant Rights Project, who have extensive experience litigating class action lawsuits and other complex cases in federal court, including civil rights lawsuits on behalf of noncitizens. They are also represented by counsel from the Foster Pepper law firm, who have extensive experience litigating constitutional and statutory rights lawsuits~~

1 in the federal and state courts, including civil rights lawsuits on behalf of a  
2 variety of plaintiffs.

3 ~~138. The family separation class satisfies Rule 23(b)(1). Requiring~~  
4 ~~separate actions by the members of this class would create the risk of~~  
5 ~~inconsistent or varying adjudications with respect to individual class~~  
6 ~~members that would establish incompatible standards of conduct for~~  
7 ~~defendants. Requiring separate actions by the members of this class~~  
8 ~~would create the risk of adjudications with respect to individual class~~  
9 ~~members that, as a practical matter, would be dispositive of the interests of~~  
10 ~~the other class members not parties to the individual adjudications, or~~  
11 ~~would at least substantially impair or impede their ability to protect their~~  
12 ~~interests.~~

13 ~~139. The family separation class satisfies Rule 23(b)(2). Defendants~~  
14 ~~have acted or refused to act on grounds that apply generally to this class.~~  
15 ~~Final injunctive relief or corresponding declaratory relief is appropriate~~  
16 ~~with respect to the class as a whole because requiring separate actions by~~  
17 ~~the members of this class would create the risk of inconsistent or varying~~  
18 ~~adjudications with respect to individual class members that would~~  
19 ~~establish incompatible standards of conduct for defendants.~~

20 ~~140.128. The family separation class satisfies Rule 23(b)(3). Questions of law or~~  
21 ~~fact common to members of this class predominate over questions affecting only individual~~  
22 ~~members. A class action is superior to other available methods for fairly and efficiently~~  
23 ~~adjudicating the legality of defendants' practice of taking children away from parents seeking~~  
24 ~~asylum as part of their implementation of the government's zero-tolerance policy.~~

1 **F. A. “Credible Fear Interview Class”**

2 141-129. With respect to plaintiffs’ claims concerning defendants’ failure to  
 3 promptly provide asylum seekers a credible fear interview and determination, plaintiffs seek to  
 4 represent the following class (the “**credible fear interview class**”):

5 All detained asylum seekers in the United States subject to expedited removal proceedings  
 6 under 8 U.S.C. §1225(b) who are not provided a credible fear determination within 10 days  
 7 of requesting asylum or expressing a fear of persecution to a DHS official, absent a request  
by the asylum seeker for a delayed credible fear interview.

8 142-130. Plaintiffs allege the following on information and belief: At least several  
 9 hundred asylum seekers currently fit within the **credible fear interview class**. Defendants  
 10 should know the precise number since the members of this class should be readily ascertainable  
 11 through defendants’ records.

12 143-131. The **credible fear interview class** satisfies Rule 23(a)(1). This class is so  
 13 numerous that joinder of all class members is impracticable.

14 144-132. The **credible fear interview class** satisfies Rule 23(a)(2). There are  
 15 questions of law or fact common to this class. Given the definition of this class, its members all  
 16 share the same common factual situation of being a detained asylum seeker subject to  
 17 defendants’ practice of failing to provide a credible fear interview and determination within  
 18 10 days of their expressing a fear of persecution or a request for asylum to a DHS official,  
 19 despite the fact they have been placed in expedited removal proceedings under 8 USC § 1225(b),  
 20 which requires immediate action. The members of this class share common questions of law  
 21 governing whether defendants’ practice of failing to provide class members a credible fear  
 22 interview and determination within 10 days of their expressing a fear of persecution or a request  
 23 for asylum to a DHS official is legal under the Fifth Amendment, ~~Eighth Amendment~~, APA, or  
 24 federal asylum statutes.

25 145-133. The **credible fear interview class** satisfies Rule 23(a)(3). Plaintiffs’  
 26 claims concerning the legality of defendants’ practice of failing to provide a credible fear

1 interview and determination within 10 days of their expressing a fear of persecution or a request  
 2 for asylum to a DHS official are typical of the claims of class members. As noted in the prior  
 3 paragraph, the definition of this class dictates that plaintiffs share with the other class members  
 4 the same common factual situation and the same common questions of law under the Fifth  
 5 Amendment, ~~Eighth Amendment~~, APA, and federal asylum statutes.

6 ~~146.134.~~ The **credible fear interview class** satisfies Rule 23(a)(4). Plaintiffs will  
 7 fairly and adequately protect the interests of that class. They are represented by counsel from the  
 8 Northwest Immigrant Rights Project and the American Immigration Council, who have extensive  
 9 experience litigating class action lawsuits and other complex cases in federal court, including  
 10 civil rights lawsuits on behalf of noncitizens. ~~They are also represented by counsel from the~~  
 11 ~~Foster Pepper law firm, who have extensive experience litigating constitutional and statutory~~  
 12 ~~rights lawsuits in the federal and state courts, including civil rights lawsuits on behalf of a variety~~  
 13 ~~of plaintiffs.~~

14 ~~147.135.~~ The **credible fear interview class** satisfies Rule 23(b)(1). Requiring  
 15 separate actions by the members of this class would create the risk of inconsistent or varying  
 16 adjudications with respect to individual class members that would establish incompatible  
 17 standards of conduct for defendants. Requiring separate actions by the members of this class  
 18 would create the risk of adjudications with respect to individual class members that, as a  
 19 practical matter, would be dispositive of the interests of the other class members not parties to  
 20 the individual adjudications, or would at least substantially impair or impede their ability to  
 21 protect their interests.

22 ~~148.136.~~ The **credible fear interview class** satisfies Rule 23(b)(2). Defendants  
 23 have acted or refused to act on grounds that apply generally to this class. Final injunctive relief  
 24 or corresponding declaratory relief is appropriate with respect to the class as a whole, especially  
 25 as it involves uniform, federal immigration law and plaintiffs are transferred across the country  
 26 by defendants. Moreover, requiring separate actions by the members of this class would create

1 the risk of inconsistent or varying adjudications with respect to individual class members that  
2 would establish incompatible standards of conduct for defendants.

3 ~~149.137.~~ The **credible fear interview class** satisfies Rule 23(b)(3). Questions of  
4 law or fact common to members of this class predominate over questions affecting only  
5 individual members. A class action is superior to other available methods for fairly and  
6 efficiently adjudicating the legality of defendants' practice of failing to provide a credible fear  
7 interview and determination within 10 days of a person's expressing a fear of persecution or  
8 requesting asylum.

9 **B. "Bond Hearing Class"**

10 ~~150.138.~~ With respect to plaintiffs' claims concerning defendants' failure to  
11 promptly conduct a bond hearing to set reasonable conditions for the asylum seeker's release  
12 pending the lengthy proceedings to adjudicate his or her asylum claim, and to provide a bond  
13 hearing that comports with the requirements of due process, plaintiffs seek to represent the  
14 following class (the "**bond hearing class**"):

15 All detained asylum seekers who entered the United States without inspection, who were  
16 initially subject to expedited removal proceedings under 8 U.S.C. §1225(b), who were  
17 determined to have a credible fear of persecution, but who are not provided a bond hearing  
18 with a verbatim transcript or recording of the hearing within 7 days of requesting a bond  
19 hearing.

20 ~~151.139.~~ Plaintiffs allege the following on information and belief: At least several  
21 hundred asylum seekers currently fit within the **bond hearing class**. Defendants should know  
22 the precise number since the members of this class should be readily ascertainable through  
23 defendants' records.

24 ~~152.140.~~ The **bond hearing class** satisfies Rule 23(a)(1). This class is so numerous  
25 that joinder of all class members is impracticable.

26 ~~153.141.~~ The **bond hearing class** satisfies Rule 23(a)(2). There are questions of  
law or fact common to this class. Given the definition of this class, its members all share the

1 same common factual situation of being asylum seekers who entered the United States without  
 2 inspection, were initially subject to expedited removal proceedings, were found to have a  
 3 credible fear of persecution, but were then subject to defendants' practice of failing to provide a  
 4 bond hearing with a transcript or recording of the hearing within 7 days of their requesting a  
 5 bond hearing. Moreover, defendant EOIR placed the burden on class members to demonstrate in  
 6 bond hearings that plaintiffs are eligible for release, and defendants EOIR failed to make any  
 7 specific, particularized findings of fact when denying bond release. The members of this class  
 8 share common questions of law governing whether defendants' practice of failing to provide a  
 9 bond hearing with a transcript or recording of the proceeding within 7 days of their requesting a  
 10 bond hearing, and Defendant EOIR's practice of placing the burden of proof on the detained  
 11 asylum seeker to demonstrate their eligibility for release-, and Defendant EOIR's failure to make  
 12 specific, particularized findings when denying release, is legal under the Fifth Amendment,  
 13 ~~Eighth Amendment~~, APA, or federal asylum statutes.

14 ~~154.142.~~ The **bond hearing class** satisfies Rule 23(a)(3). Plaintiffs' claims  
 15 concerning the legality of defendants' practice of failing to provide a bond hearing with a  
 16 transcript or recording of the proceeding within 7 days of an asylum seeker's requesting a bond  
 17 hearing hearing, and Defendant EOIR's practice of placing the burden of proof on the detained  
 18 asylum seeker to demonstrate they are eligible for release should be granted a bond, and  
 19 Defendant EOIR's failure to make specific findings when denying a bond release, are typical of  
 20 the claims of class members. As noted in the prior paragraph, the definition of this class dictates  
 21 that plaintiffs share with the other class members the same common factual situation and the  
 22 same common questions of law under the Fifth Amendment, ~~Eighth Amendment~~, APA, and  
 23 federal asylum statutes.

24 ~~155.143.~~ The **bond hearing class** satisfies Rule 23(a)(4). Plaintiffs will fairly and  
 25 adequately protect the interests of that class. They are represented by counsel from the  
 26 Northwest Immigrant Rights Project and the American Immigration Council, who have extensive

1 experience litigating class action lawsuits and other complex cases in federal court, including  
 2 civil rights lawsuits on behalf of noncitizens. ~~They are also represented by counsel from the~~  
 3 ~~Foster Pepper law firm, who have extensive experience litigating constitutional and statutory~~  
 4 ~~rights lawsuits in the federal and state courts, including civil rights lawsuits on behalf of a variety~~  
 5 ~~of plaintiffs.~~

6 ~~156.144.~~ The **bond hearing class** satisfies Rule 23(b)(1). Requiring separate  
 7 actions by the members of this class would create the risk of inconsistent or varying  
 8 adjudications with respect to individual class members that would establish incompatible  
 9 standards of conduct for defendants. Requiring separate actions by the members of this class  
 10 would create the risk of adjudications with respect to individual class members that, as a  
 11 practical matter, would be dispositive of the interests of the other class members not parties to  
 12 the individual adjudications, or would at least substantially impair or impede their ability to  
 13 protect their interests.

14 ~~157.145.~~ The **bond hearing class** satisfies Rule 23(b)(2). Defendants have acted or  
 15 refused to act on grounds that apply generally to this class. Final injunctive relief or  
 16 corresponding declaratory relief is appropriate with respect to the class as a whole especially as it  
 17 involves uniform, federal immigration law and plaintiffs are transferred across the country by  
 18 defendants. Moreover, requiring separate actions by the members of this class would create the  
 19 risk of inconsistent or varying adjudications with respect to individual class members that would  
 20 establish incompatible standards of conduct for defendants.

21 ~~158.146.~~ The **bond hearing class** satisfies Rule 23(b)(3). Questions of law or fact  
 22 common to members of this class predominate over questions affecting only individual  
 23 members. A class action is superior to other available methods for fairly and efficiently  
 24 adjudicating the legality of defendants' practice of failing to provide a bond hearing with a  
 25 transcript or recording of the proceeding within 7 days of an asylum seeker's requesting a bond  
 26 hearing, defendant EOIR's --practice of placing the burden of proof on the detained asylum



1 ~~seeker to demonstrate they are eligible for releases should be granted a bond, and Defendant~~  
2 ~~EOIR's failure to make specific, particularized findings when denying a bond release.~~

3 **VII. CAUSES OF ACTION**

4 **COUNT I**

5 **(Violation of Due Process) Constitutional Violations**

6 ~~159.147. All of the foregoing allegations in this Amended Complaint that are not~~  
7 ~~inconsistent with this Count are repeated and re-alleged as though fully set forth in this~~  
8 ~~numbered paragraph herein.~~

9 ~~160.—The Due Process Clause of the Fifth Amendment applies to all “persons” on~~  
10 ~~United States soil and thus applies to Mss. Guzman, Orantes, and Padilla and their children as~~  
11 ~~well as Mr. Vasquez and all proposed class members. The Fifth Amendment of the United States~~  
12 ~~Constitution prohibits the federal government from depriving any person of their liberty without~~  
13 ~~due process of law.~~

14 ~~161.—The Fifth Amendment's due process clause applies to all persons in the United~~  
15 ~~States.~~

16 ~~162.—The Eighth Amendment of the United States Constitution prohibits~~  
17 ~~the federal government from imposing or inflicting on any person any~~  
18 ~~excessive bail or any cruel punishments.~~

19 ~~163.—The Eighth Amendment's protections apply to all persons in the~~  
20 ~~United States.~~

21 ~~164.—Asylum seekers who cross the United States border are persons.~~

22 ~~165.148. The named plaintiffs are persons are in the United States. Their children~~  
23 ~~in federal government custody are persons are in the United States. The proposed class members~~  
24 ~~identified in Section VI of this Amended Complaint are persons in the United States.~~

25 ~~166.—The named plaintiffs, their children, and proposed class members have a~~  
26 ~~constitutionally protected liberty interest in (1) remaining together as a family, (2) not being~~



1 imprisoned in federal detention for an unreasonable time awaiting their credible fear interview  
 2 and determination, ~~and (23)~~ not being imprisoned in federal detention for an unreasonable time  
 3 awaiting their bond hearing, and (3) having a bond hearing that is fair and comports with due  
 4 process.

5 ~~167.149. \_\_\_\_\_ Especially with respect to the federal government's zero-tolerance policy~~  
 6 ~~to deter criminal violations of federal immigration laws, the plaintiffs, their children, and~~  
 7 ~~proposed class members have a constitutionally protected interest in (4) not being subjected to~~  
 8 ~~unreasonable bond conditions~~ [gal], ~~and (5) not being subjected to cruel punishments.~~

9 **A. —“Family Separation Class”**

10 ~~168. —The federal government's forcibly separating plaintiffs Padilla, Guzman, and~~  
 11 ~~Orantes from their children violated the substantive due process rights of plaintiffs and their~~  
 12 ~~children. That forced separation did not further a legitimate purpose. That forced separation did~~  
 13 ~~not further a compelling governmental interest. Defendants' forcibly separating plaintiffs~~  
 14 ~~Padilla, Guzman, and Orantes from their children violated the constitutional substantive due~~  
 15 ~~process rights of plaintiffs and their children.~~

16 ~~169. —The federal government's forcibly separating plaintiffs Padilla, Guzman, and~~  
 17 ~~Orantes from their children violated the procedural due process rights of plaintiffs and their~~  
 18 ~~children. The government did not make any accusation that plaintiffs were unfit parents, were~~  
 19 ~~not acting in the best interest of their child, were a threat to their child's safety, abused their~~  
 20 ~~child, or neglected their child. The government did not have any evidence of plaintiffs being~~  
 21 ~~unfit parents, or not acting in the best interest of their child, or being a threat to their child's~~  
 22 ~~safety, or abusing their child, or neglecting their child. Defendants' forcibly separating~~  
 23 ~~plaintiffs Padilla, Guzman, and Orantes from their children without any hearing violated the~~  
 24 ~~constitutional procedural due process rights of plaintiffs and their children.~~

25 ~~170. —The federal government's forcibly separating plaintiffs Padilla, Guzman, and~~  
 26 ~~Orantes from their children violated the Eighth Amendment. That forced separation was cruel~~

~~and excessive. It was deliberately done to penalize and deter persons from seeking asylum. And it was deliberately done as part of the federal government's zero-tolerance policy against criminal violations of federal immigration laws. Defendants' forcibly separating plaintiffs Padilla, Guzman, and Orantes from their children violated the constitutional Eighth Amendment rights of plaintiffs and their children.~~

~~171. As with plaintiffs Padilla, Guzman, and Orantes, defendants' forcibly separating members of the family separation class from their children violated substantive due process, procedural due process, and the Eighth Amendment.~~

**~~B. "Credible Fear Interview Class"~~**

~~172.150.~~ The federal government's imprisoning plaintiffs and members of the Credible Fear Interview Class in federal detention for an unreasonable time awaiting their credible fear interview and determination violates their substantive due process rights. The government's prolonging these asylum seekers' federal detention by delaying their credible fear interview and determination more than 10 days does not further a legitimate purpose. The government's prolonging these asylum seekers' federal detention by delaying their credible fear interview and determination more than 10 days does not further a compelling governmental interest. Defendants' prolonging ~~their plaintiffs'~~ federal detention by delaying their credible fear interview and determination more than 10 days is a violation of the constitutional substantive due process rights of plaintiffs and their children as well as of members of the Credible Fear Interview Class.

~~173.~~ The federal government's imprisoning plaintiffs and members of the Credible Fear Class in federal detention for an unreasonable time awaiting their credible fear interview and determination violates their procedural due process rights. That ongoing imprisonment awaiting a credible fear interview and determination is contrary to the law governing expedited removal proceedings and is imposed without any hearing. Defendants' imprisoning plaintiffs and members of the Credible Fear Interview Class in federal detention for an unreasonable time

awaiting their credible fear interview and determination is a violation of the constitutional due process rights of plaintiffs and their children as well as of members of the Credible Fear Interview Class.

~~7. —The federal government’s imprisoning plaintiffs in federal detention for an unreasonable time awaiting their credible fear interview and determination violates the Eighth Amendment. The government’s actions maintaining plaintiffs in limbo in federal detention by deliberately delaying the threshold credible fear interview to which they are entitled is excessive. It is deliberately done as part of the government’s effort to penalize and deter persons from seeking asylum. It is deliberately done as part of the federal government’s zero-tolerance policy against criminal violations of federal immigration laws. Deliberately confining asylum seekers in limbo by delaying the credible fear interview to which they are entitled is cruel. Defendants’ imprisoning plaintiffs in federal detention for an unreasonable time awaiting their credible fear interview and determination is a violation of the constitutional Eighth Amendment rights of plaintiffs and their children.~~

~~7. —As with plaintiffs, defendants’ imprisoning members of the credible fear interview class in federal detention for an unreasonable time awaiting their credible fear interview and determination violates substantive due process, procedural due process, and the Eighth Amendment.~~

~~E.151.~~ “Bond Hearing Class”

~~174.152.~~ The federal government’s imprisoning plaintiffs and members of the Bond Hearing Class in federal detention for an unreasonable time awaiting a bond hearing to assess their eligibility for release ~~set reasonable conditions for their release~~ pending the lengthy proceedings to adjudicate their asylum claim violates substantive due process. The government’s prolonging these asylum seekers’ federal detention by delaying their bond hearing more than 7 days does not further a legitimate purpose. The government’s prolonging these asylum seekers’ federal detention by delaying their bond hearing more than 7 days does not

1 further a compelling governmental interest. Moreover, denying ~~bonds-release~~ for general  
 2 deterrence or punishment goals unrelated to the specific factors of whether the individual  
 3 presents a flight risk or danger to the community unlawfully deprives these asylum seekers of  
 4 their constitutional right to liberty. Defendants' prolonging plaintiffs' and members of the Bond  
 5 Hearing Class's federal detention by delaying their bond hearing more than 7 days is a violation  
 6 of the constitutional substantive process rights of plaintiffs and ~~their children as well as of~~  
 7 members of the Bond Hearing Class.

8 ~~175.~~—The federal government's imprisoning plaintiffs and members of the Bond  
 9 Hearing Class in federal detention for an unreasonable time awaiting a bond hearing to assess  
 10 their eligibility for set reasonable conditions for their release pending the lengthy proceedings to  
 11 adjudicate their asylum claim violates procedural due process. That ongoing detention is  
 12 imposed without providing ~~basic procedural protections, such as~~ a bond hearing with a transcript  
 13 or recording of the hearing and specific, particularized findings with respect to any denial of  
 14 release, thereby and denies ying plaintiffs and members of the Bond Hearing Class an adequate  
 15 record to file an administrative appeal or habeas petition. Moreover, denying ~~bonds-release~~ for  
 16 general deterrence goals unrelated to the specific factors of whether the individual presents a  
 17 flight risk or danger to the community strips detained asylum seekers of a fair hearing. -What is  
 18 more, placing the burden on the noncitizen to demonstrate their eligibility for release entitlement  
 19 to bond also constitutes a violation of their due process rights. Defendants' prolonging plaintiffs'  
 20 and members of the Bond Hearing Class's federal detention by failing to provide a bond hearing  
 21 where the burden of proof is on the government and with a verbatim transcript or recording of  
 22 the hearing within 7 days of requesting a bond is a is a violation of the constitutional substantive  
 23 due process rights of plaintiffs and their children as well as of members of the Bond Hearing  
 24 Class.

25 ~~176.153.~~ The federal government's imprisoning plaintiffs for an unreasonable time  
 26 pending the lengthy proceedings to adjudicate their asylum claim violates the Eighth

~~Amendment. The government's keeping their detention in limbo by deliberately delaying the bond hearing to which they are entitled is excessive. Moreover, the government's determinations to deny bond for general deterrence policy purposes, rather than based on individual determinations based on evidence that the person presents a flight risk or threat to the community, violates the Eighth Amendment. It is deliberately done as part of the government's effort to penalize and deter persons from seeking asylum. It is deliberately done as part of the federal government's zero-tolerance policy against criminal violations of federal immigration laws. Deliberately confining detained asylum seekers by delaying bond hearings and denying bond for general deterrence and policy measures unrelated to their individual cases is cruel. Defendants' imprisoning plaintiffs in federal detention for an unreasonable time pending the lengthy proceedings to adjudicate their asylum claim by failing to provide a bond hearing with a verbatim transcript or recording of the hearing within 7 days of plaintiffs requesting a bond hearing is a violation of the constitutional Eighth Amendment rights of plaintiffs and their children.~~

~~177. As with plaintiffs, defendants' imprisoning members of the bond hearing class in federal detention for an unreasonable time awaiting a bond hearing to set reasonable conditions for their release pending the lengthy proceedings to adjudicate their asylum claim violates substantive due process, procedural due process, and the Eighth Amendment.~~

## COUNT II

### (Administrative Procedure Act—~~Arbitrary and Capricious Practice~~)

~~All allegations in this Amended Complaint that are not inconsistent with this Count are repeated and re-alleged as though fully set forth in this numbered paragraph.~~

~~1. All of the foregoing allegations are repeated and re-alleged as though fully set forth herein.~~

~~1. The APA prohibits agency action that is arbitrary and capricious and.~~

~~1. The APA prohibits agency action that is contrary to a constitutional right.  
5 U.S.C. §706(2).~~

~~D. “Family Separation Class”~~

~~1. Defendants’ decision to separate plaintiffs Padilla, Guzman, and Orantes from their children without a compelling justification, and without a mechanism, protocol, or system to guarantee their reunification, is a final agency action. That action is arbitrary and capricious. It violates the APA. 5 U.S.C. §706(2)(A).~~

~~1. As with plaintiffs Padilla, Guzman, and Orantes, defendants’ decision to decision to separate members of the family separation class from their children without a compelling justification, and without a mechanism, protocol, or system to guarantee their reunification, is a final agency action. That action is arbitrary and capricious. It violates the APA. 5 U.S.C. §706(2)(A).~~

~~A.154. “Credible Fear Interview Class”~~

~~178.—~~Defendants’ decision to detain plaintiffs and members of the Credible Fear Interview Class for an unreasonable time awaiting their credible fear interview, without a compelling justification and without a mechanism, protocol, or system to assure a prompt and fair credible fear interview and determination, is a final agency action. That action ~~is arbitrary and capricious. It violates the APA.~~ 5 U.S.C. §§706(1) and (2)(A) and (B).

~~1. —As with plaintiffs, defendants’ decision to detain members of the credible fear interview class for an unreasonable time awaiting their credible fear interview, without a compelling justification and without a mechanism, protocol, or system to assure a prompt and fair credible fear interview and determination, is a final agency action. That action is arbitrary and capricious. It violates the APA. 5 U.S.C. §706(2)(A).~~

~~C.155. “Bond Hearing Class”~~

1 ~~179.~~156. Defendants' decision to detain plaintiffs and members of the Bond  
 2 Hearing Class for an unreasonable time awaiting a bond hearing to set reasonable conditions for  
 3 their release pending the lengthy proceedings to adjudicate their asylum claim, without a  
 4 compelling justification and without a mechanism, protocol, or system to assure a prompt and  
 5 fair bond hearing, is a final agency action. That action ~~is arbitrary and capricious. It violates the~~  
 6 ~~APA.~~ 5 U.S.C. §§706(1) and (2)(A) and (B).

7 ~~180. As with plaintiffs, defendants' decision to detain members of the bond hearing class for~~  
 8 ~~an unreasonable time awaiting a bond hearing to set reasonable conditions for their release~~  
 9 ~~pending the lengthy proceedings to adjudicate their asylum claim, without a compelling~~  
 10 ~~justification and without a mechanism, protocol, or system to assure a prompt and fair bond~~  
 11 ~~hearing, is a final agency action. That action is arbitrary and capricious. It violates the APA.~~  
 12 ~~5 U.S.C. §706(2)(A).~~

14 ~~181.~~157. Defendants' decision to deny plaintiffs and members of the Bond Hearing  
 15 Class a bond hearing with adequate procedural protections, specifically a hearing where the  
 16 burden of proof is on the government, and a recording or transcript of the hearing is available  
 17 for any subsequent administrative appeal or habeas petition, and specific, particularized findings  
 18 of any denial of release, is a final agency action. That action ~~is arbitrary and capricious. It~~  
 19 violates ~~the APA.~~ 5 U.S.C. §§706(1) and (2)(A) and (B).

20 ~~182. As with plaintiffs, defendants' decision to deny members of the bond hearing~~  
 21 ~~class a bond hearing with adequate procedural protections, specifically a recording or transcript~~  
 22 ~~of the hearing available for any subsequent administrative appeal or habeas petition, is, is a final~~  
 23 ~~agency action. That action is arbitrary and capricious. It violates the APA.~~  
 24 ~~5 U.S.C. §706(2)(A).~~



**COUNT III**

**~~(Administrative Procedure Act—  
Agency Action Unlawfully Withheld or Unreasonably Delayed)~~**

~~185. All allegations in this Amended Complaint that are not inconsistent with this Count are repeated and re-alleged as though fully set forth in this numbered paragraph. All of the foregoing allegations are repeated and re-alleged as though fully set forth herein.~~

~~186.158.~~ The APA imposes on federal agencies the duty to conclude matters presented to it within a “reasonable time.” 5 U.S.C. §555(b).

~~7.~~ The APA prohibits agency action that is “unlawfully withheld or unreasonably delayed.” 5 U.S.C. §706(1).

**~~B. “Family Separation Class”~~**

~~7. Defendants’ failure to promptly reunify plaintiffs Padilla, Guzman, and Orantes with their children violates defendants’ legal duty under the APA to conclude matters within a reasonable time, and constitutes an agency action unlawfully withheld or unreasonably delayed in violation of the APA. 5 U.S.C. §706(2)(A).~~

~~7. As with plaintiffs Padilla, Guzman, and Orantes, defendants’ failure to failure to promptly reunify members of the family separation class with their children violates defendants’ legal duty under the APA to conclude matters within a reasonable time, and constitutes an agency action that is unlawfully withheld or unreasonably delayed in violation of the APA. 5 U.S.C. §706(2)(A).~~

**~~A.159. “Credible Fear Interview Class”~~**

~~187. A person placed in expedited removal proceedings who is seeking asylum is allowed to present their asylum claim to an immigration judge only after DHS conducts a~~



1 credible fear interview to determine if the person seeking asylum has a “credible fear of  
2 persecution.” 8 C.F.R. §208.30(f), (g).

3 ~~188.—Defendant DHS and its sub-agencies are required to conduct an interview to~~  
4 ~~assess whether an asylum seeker has a credible fear of persecution. Conducting a credible fear~~  
5 ~~interview to determine whether a person seeking asylum has a credible fear of persecution is a~~  
6 ~~discrete, final agency action that DHS is required to take.~~

7 ~~160. DHS’s obligation to conduct a credible fear interview to determine whether the~~  
8 ~~person seeking asylum has a credible fear of persecution~~ This obligation is triggered when ~~that~~  
9 ~~person requests asylum or expresses a fear of persecution to any DHS official.~~ Defendants learn  
10 ~~of an individual’s fear of persecution. See 8 U.S.C. §1225(b)(1)(A)(ii). Asylum seekers are only~~  
11 ~~permitted to raise their claims before an immigration judge after the asylum officer’s credible~~  
12 ~~fear determination. See 8 C.F.R. § 208.30(f), (g).~~

13 ~~189.161. Conducting a credible fear interview to determine whether a person~~  
14 ~~seeking asylum has a credible fear of persecution is a discrete, final agency action that DHS is~~  
15 ~~required to take.~~

16 ~~190.—DHS’s Defendants’ failure to promptly expeditiously conduct a credible fear~~  
17 ~~interview after detaining plaintiffs and members of the Credible Fear Interview class for the~~  
18 ~~credible fear determination after plaintiffs requested asylum or expressed a fear of persecution~~  
19 ~~violated DHS’s legal duty constitutes “an agency action unlawfully withheld or unreasonably~~  
20 ~~delayed” under the APA. Ssee 5 U.S.C. § 706(1) to conclude matters presented to it within a~~  
21 ~~reasonable time.~~

22 ~~7.—DHS’s failure to promptly conduct a credible fear interview for the credible fear~~  
23 ~~determination after plaintiffs requested asylum or expressed a fear of persecution constituted an~~  
24 ~~agency action that was unlawfully withheld or unreasonably delayed in violation of the APA.~~

25 ~~7.—As with plaintiffs, DHS’s failure to promptly conduct a credible fear~~  
26 ~~interview for the credible fear determination after members of the credible~~

~~fear interview class requested asylum or expressed a fear of persecution violates its legal duty under the APA to conclude matters presented to it within a reasonable time, and constituted an agency action that is unlawfully withheld or unreasonably delayed in violation of the APA.~~

~~D.162. “Bond Hearing Class”~~

~~191.163. \_\_\_\_\_~~ If the ~~credible fear interview conducted by DHS~~ asylum officer determines that an asylum seeker has a credible fear of persecution, ~~DHS assigns~~ the case is transferred to EOIR ~~to initiate immigration court proceedings for that~~ for adjudication of the asylum claim by asylum seeker to adjudicate his or her asylum claim before an immigration judge.

~~192.164. \_\_\_\_\_~~ If an asylum seeker in the bond hearing class is found to have a credible fear of persecution and is in federal detention, that An asylum seeker is in the Bond Hearing Class is entitled to a bond hearing to assess eligibility ~~set reasonable conditions~~ for his or her release from ~~federal DHS custody~~ detention pending the lengthy proceedings to adjudicate his or her asylum claim.

~~193.165. \_\_\_\_\_~~ Defendant EOIR’s failure to promptly conduct a bond hearing for plaintiffs and members of the Bond Hearing Class within 7 days ~~to set reasonable conditions for a detained asylum seeker’s~~ their release pending the lengthy proceedings to adjudicate his or her ~~asylum claim~~ violates defendant’s legal duty under the APA to conclude matters presented to it within a reasonable time.

~~194.166. \_\_\_\_\_~~ Defendant EOIR’s failure to conduct a bond hearing for plaintiffs and members of the Bond Hearing Class with appropriate procedural safeguards ~~to set reasonable conditions for a detained asylum seeker’s release pending the lengthy proceedings to adjudicate his or her asylum claim~~ constitutes an agency action unlawfully withheld or unreasonably delayed in violation of the APA.

~~195. \_\_\_\_\_~~ As with plaintiffs, defendant EOIR’s failure to promptly conduct a bond hearing ~~with appropriate procedural safeguards to set reasonable conditions for a detained asylum~~

1 ~~seeker's release pending the lengthy proceedings to adjudicate his or her asylum claim violates~~  
 2 ~~its legal duty under the APA to conclude matters presented to it within a reasonable time, and~~  
 3 ~~constitutes an agency action that is unlawfully withheld or unreasonably delayed in violation of~~  
 4 ~~the APA.~~

5 **COUNT III**  
 6 **(Violation of Asylum ~~Law~~ Statute)**

7 ~~196.167. All of the foregoing allegations are repeated and re-alleged as though~~  
 8 ~~fully set forth herein. All allegations in this Amended Complaint that are not inconsistent with this~~  
 9 ~~Count are repeated and re-alleged as though fully set forth in this numbered paragraph.~~

10 ~~197.168. United States law~~ The Immigration and Nationality Act grants noncitizens  
 11 fleeing persecution the opportunity to apply for asylum in the United States.  
 12 8 U.S.C. § 1225(b)(1) (expedited removal); 8 C.F.R. §§ 235.3(b)(4), 208.30, & 1003.42;  
 13 8 U.S.C. § 1158(a)(1).

14 ~~198.169.~~ International law likewise recognizes the fundamental human right to  
 15 asylum of persons fleeing for safety from persecution and torture.

16 ~~1.~~ Noncitizens fleeing persecution have a private right of action to vindicate their  
 17 right to apply for and receive asylum in the United States.

18 **~~B.~~ "Family Separation Class"**

19 ~~1. When plaintiffs Padilla, Guzman, and Orantes requested asylum,~~  
 20 ~~defendants promptly took their minor child away from them (1) without~~  
 21 ~~any evidence or accusation that they were unfit parents, or were not acting~~  
 22 ~~in the best interest of their child, or were a threat to their child's safety, or~~  
 23 ~~abused their child, or neglected their child, and (2) without any hearing.~~

24 ~~1. Defendants' promptly taking away the minor children of asylum seekers~~  
 25 ~~seekers Padilla, Guzman, and Orantes unlawfully infringed on their legal~~  
 26 ~~right to pursue their asylum claims.~~

~~1. As with plaintiffs Padilla, Guzman, and Orantes, defendants separated members of the family separation class from their child (1) without any evidence or accusation that they were unfit parents, or were not acting in the best interest of their child, or were a threat to their child's safety, or abused their child, or neglected their child, and (2) without any hearing.~~

~~1. As with plaintiffs Padilla, Guzman, and Orantes, defendants' promptly promptly taking away the minor children of members of the family separation class unlawfully infringed on their legal right to pursue their asylum claims.~~

~~G.170. "Credible Fear Interview Class"~~

~~199.~~ Defendants' failure to promptly conduct a credible fear interview for ~~the credible fear determination after plaintiffs requested asylum or expressed a fear of persecution~~ plaintiffs and members of the Credible Fear Interview Class violates the asylum statute because it unlawfully infringed infringes on their legal rightability to pursue their asylum claims.

~~1. As with plaintiffs, defendants' failure to promptly conduct a credible fear interview for the credible fear determination after credible fear interview class members requested asylum or expressed a fear of persecution unlawfully infringes on their legal right to pursue their asylum claims.~~

~~I.171. "Bond Hearing Class"~~

~~200.172.~~ Defendants' failure to promptly conduct a bond hearing to assess eligibility for set reasonable conditions for the release of plaintiffs and members of the Bond Hearing Class pending the lengthy proceedings to adjudicate their asylum claims violates the asylum statute because it unlawfully infringes on their legal rightability to pursue their asylum claims.

~~8. As with plaintiffs, defendants' failure to promptly conduct a bond hearing to set reasonable conditions for the release of members of the bond hearing class pending the lengthy~~

proceedings to adjudicate their asylum claims unlawfully infringes on their legal right to pursue their asylum claims.

**IX.VIII. PRAYER FOR RELIEF**

Plaintiffs respectfully request that this Court enter judgment against defendants granting the following relief:

~~A. Certify the following **Family Separation Class**: “All parents who sought asylum and were (1) detained in immigration custody by defendants in Washington State and (2) separated from a minor child by defendants absent a demonstration in a hearing that that parent is unfit or presents a danger to the child.”~~

~~B. Name plaintiffs Padilla, Guzman, and Orantes as representatives of the Family Separation Class, and appoint their counsel as Family Separation Class counsel.~~

~~C. Declare that defendants’ separation of plaintiffs Padilla, Guzman, and Orantes from their children is unlawful.~~

~~D. Declare that defendants’ separation of Family Separation Class members from their children is unlawful.~~

~~E. Preliminarily and permanently enjoin defendants from detaining Family Separation Class members (including plaintiffs Padilla, Guzman, and Orantes) in separate locations from where their children are detained; and enjoin defendants from removing Family Separation Class members (including plaintiffs Padilla, Guzman, and Orantes) from the country until they are reunited with their children (in the event they are not permitted to remain in the United States), absent the parent’s permission or a hearing before a court where the government demonstrates that it is not in the child’s best interest to be reunified with their parent.~~

~~F.A.~~ Certify the following **Credible Fear Interview Class**: “All detained asylum seekers in the United States subject to expedited removal proceedings under

8 U.S.C. §1225(b) who are not provided a credible fear determination within 10 days of requesting asylum or expressing a fear of persecution to a DHS official.”

~~G.B.~~ Name plaintiffs as representatives of the Credible Fear Interview Class, and appoint their counsel as class counsel.

~~H.C.~~ Declare that defendants have an obligation to provide Credible Fear Interview Class members ~~(including plaintiffs)~~ their credible fear interview and determination within 10 days of that person’s requesting asylum or expressing a fear of persecution to any DHS official.

~~I.D.~~ Preliminarily and permanently enjoin defendants from not providing Credible Fear Interview Class members ~~(including plaintiff Vasquez)~~ their credible fear determination within 10 days of that person’s requesting asylum or expressing a fear of persecution to any DHS official.

~~J.E.~~ Certify the following **Bond Hearing Class**: “All detained asylum seekers who entered the United States without inspection, were initially subject to expedited removal proceedings under 8 U.S.C. §1225(b), were determined to have a credible fear of persecution, but are not provided a bond hearing with a verbatim transcript or recording of the hearing within 7 days of requesting a bond hearing.”

~~K.F.~~ Name plaintiffs as representatives of the Bond Hearing Class, and appoint their counsel as class counsel.

~~L.G.~~ Declare that defendants have an obligation to provide Bond Hearing Class members ~~(including plaintiffs)~~ a bond hearing within 7 days of their requesting a hearing to set reasonable conditions for their release pending adjudication of their asylum claim.

~~H.~~ Declare that defendants have an obligation to provide Bond Hearing Class members (including plaintiffs) a bond hearing with adequate procedural safeguards, including a verbatim transcript or recording of their bond hearing.

1 I. Declare that defendant DHS must bear the burden of proof to show continued  
2 detention is necessary in civil immigration proceedings.

3 M.J. Declare that in bond hearings immigration judges must make specific,  
4 particularized written findings as to the basis for denying release from detention,  
5 including findings identifying the basis for finding that the individual is a flight risk  
6 or a danger to the community.

7 ~~N.K.~~ Preliminarily and permanently enjoin defendants from not providing Bond  
8 Hearing Class members ~~(including plaintiffs Guzman, Orantes, and Vasquez)~~ their  
9 bond hearing with a verbatim transcript or recording of their bond hearing.

10 L. Preliminarily and permanently enjoin defendants from not providing Bond Hearing  
11 Class members ~~(including plaintiffs Orantes and Vasquez)~~ their bond hearing within  
12 7 days of the asylum seeker's request.

13 M. Preliminarily and permanently enjoin defendants from not providing Bond Hearing  
14 Class members bond hearings where defendant DHS bears the burden of proof to  
15 show continued detention is necessary.

16 N. Preliminarily and permanently enjoin defendants from not providing Bond Hearing  
17 Class members where immigration judges make specific, particularized written  
18 findings as to the basis for denying release from detention, including findings  
19 identifying the basis for finding that the individual is a flight risk or a danger to the  
20 community for any determination that the individual is a flight risk or a danger to the  
21 community when denying bond.

22 ~~O.N.~~

23 ~~P.O.~~ Order defendants to pay reasonable attorneys' fees and costs.

24 ~~Q.P.~~ Order all other relief that is just and proper.  
25  
26

Dated this 15<sup>th</sup> day of July, 2018.

s/ Matt Adams

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2018, I had the foregoing electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 15<sup>th</sup> day of July, 2018.

s/ Thomas F. Ahearne

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